



STATE OF VERMONT

UNITED STATES OF AMERICA

IN SENATE, JANUARY 1, 1881.

REPORT OF THE COMMISSIONER OF THE LAND OFFICE

FOR THE YEAR 1880.

BLEED THROUGH- POOR COPY

No. 13281

**United States
Court of Appeals**
for the Ninth Circuit.

ELMER F. REMMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Nine Volumes

Volume IV
(Pages 1373 to 1848)

**Appeal from the United States District Court
for the District of Nevada.**

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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December 17, 1951—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

WILLIAM E. KYNE

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Campbell: At the close of the session Friday the witness had identified Plaintiff's Exhibit 25 for identification, the signature card and certain slips relative to safety deposit box at the Crocker National Bank, as being jointly held by himself and the defendant under the name of Henry Clay. At this time I wish to offer this exhibit in evidence as government's 25.

The Court: Exhibit 25 may be admitted in evidence.

Mr. Campbell: With the Court's permission, I will read briefly from this exhibit. There is written on the document "Access to either." Bears the signature of William E. Kyne and signature of Henry Clay. (Reads Exhibit 25.)

Q. Now, Mr. Kyne, in addition to the safety deposit box, box No. 48, which you had at the Day and Night branch of the Bank of America and this box at the Crocker First National Bank, did you also maintain other safety deposit boxes with relation to Mr. Remmer's business?

(Testimony of William E. Kyne.)

A. Had one at the Bank of America, a box that belonged to Pat Pritchett and myself. [892]

Q. Is Pat Pritchett the individual you have described as being an employee at the B & R Smoke Shoppe? A. Yes, sir, he is employed there.

Q. And is he the same individual described as handling the financial affairs of the B & R Smoke Shoppe during the period of time it was in operation and you were in the service?

A. That is correct.

Q. Now other than the type of daily diary record which you identified Friday, were any other books and records maintained by the B & R Smoke Shoppe? A. No, sir.

Q. Were there any books of the nature of general ledgers or journals? A. No, sir.

Q. Now will you state whether or not it was the practice for the partners in that enterprise, Mr. Remmer, yourself and Mr. Lando, to withdraw money from time to time during the years it might be needed? A. As they needed it, yes.

Q. And what record, if any, was maintained of those withdrawals?

A. Just put in a marker for whatever they needed.

Q. And what was the practice with relation to repaying those markers?

A. Well, they would pick the marker up whenever they could.

Q. As of the year ends, while you were there, did there still [893] remain markers?

(Testimony of William E. Kyne.)

A. Usually on a settlement there was markers.

Q. And did or did not those markers enter into the final settlement at the end of each year?

A. They were considered as cash.

Q. Now as of the end of 1944, do you recall whether or not any of the partners were overdrawn, so far as their share of the profits were concerned?

A. No, I don't know.

Q. Do you recall, as of the end of 1946, were there any of the partners overdrawn so far as their share of the profits were concerned?

A. No, I don't.

Q. Aside from markers, which I believe you have identified as being similar in character of an IOU, was any book record kept of those amounts?

A. No, sir.

Q. Now with regard to the layoff bets which you accepted from others, did or did not the bets so received become a part of your regular business for the particular day?

Mr. Gillen: We offer the objection, first it is a confusing question, and secondly, to call for the conclusion of the witness.

Mr. Campbell: This man was a partner in that business.

The Court: You may answer the question. Do you [894] understand the question?

A. I wish you would repeat it.

Mr. Campbell: I will reframe it.

Q. For example, Mr. Kyne, on a particular day when you received layoff bets from other book-

(Testimony of William E. Kyne.)

makers, did or did not that become a part of and was that entered into your business for that day?

A. Yes, sir, that would be considered as part of the handle.

Q. And was or was not such money treated as other bets which you received from local people phoning in a bet?

Mr. Gillen: Just a moment. I am going to offer the objection that the question is confusing because as I recall there were two types of layoff bets, one where you would obtain somebody, other bookmakers to take up some of the bets, another where you take some of the bets yourself by way of layoff, and third where you lay off some money which you had to somebody else, so I think it should be broken down to what particular layoff bet counsel refers to.

The Court: I will inquire if the witness was confused by the question?

A. No, the question is clear.

The Court: You may answer.

Mr. Gillen: I wonder if counsel would clear it for me which type he is pertaining to?

The Court: Perhaps the answer would clear up the [895] confusion. If not, you can take it up on cross-examination.

(Question read.)

A. That is correct. It was just considered as handle.

Q. With regard to layoff bets received from other bookmakers and accepted by you, if the bet

(Testimony of William E. Kyne.)

was a losing bet, so far as the customer was concerned, who received the profit?

A. Who we laid to?

Q. No, I mean when you received the bet.

A. Who received the profit?

Q. Yes. A. The fellow you laid it off.

Q. No, I think you misunderstood my question. I am referring to bets which you have accepted of other bookmakers and placed with you, their laying off to you, and it is a losing bet, so far as the person putting up the money is concerned, who received the profit?

A. Are you talking about layoffs to us?

Q. To you.

A. If we accepted a bet, naturally that would be our profit.

Q. And in converse, if a bet won, you would suffer a loss, is that correct?

A. You refer to layoff from another bookmaker? We would consider that as a bet.

Q. The other bookmaker would consider that as layoff but you would consider it as bet? [896]

A. That's right.

Q. And if that bet won, you would have to pay the loss? A. The loss.

Q. If the bet lost, you would receive the profit, is that right? A. Correct.

Q. Now so far as lay-off bets which you made, did you assume either profit or loss on such bets?

(Testimony of William E. Kyne.)

A. Just the way it went—we just handled the money.

Q. So that if the person who placed the money with you and which you laid off with another bookmaker, won his bet, the other bookmaker would have to pay it, is that correct?

A. That's correct.

Q. If he lost his bet, that bookmaker would receive the profit, is that correct? A. Correct.

Q. Now reference was made to the fact that lay-off bets are ordinarily for two purposes, namely, to spread the money around so that the odds will not be affected, or, secondly, where a given bookmaker has assumed what he considered too great a risk on a particular horse, is that correct?

A. That is correct.

Q. Now so far as layoff bets from other bookmakers which are received by you, come bets to you, does it make any difference to your operation for what purpose the bets were placed with [897] you by other bookmakers?

A. Will you repeat the question?

(Question read.)

A. It is just a courtesy to move money off other bookmakers.

Q. But it is a fact, is it not, that such money is handled as other bets which you receive from your regular customers? A. Same way, yes, sir.

Mr. Gillen: I move to strike the question as leading and suggestive, assuming something not in

(Testimony of William E. Kyne.)

evidence. I think it is confusing because the witness had answered it was a matter of courtesy, which I take it would mean there was no profit involved in the matter and then counsel in the last question said something as to the same as other customers placing bets, which would indicate there was a profit.

The Court: The motion will be denied.

Mr. Gillen: May I have the question and answer read?

(Question and answer read.)

Q. Now I believe you stated, Mr. Kyne, that you were in the service from February, 1945, until approximately June of '46? A. Yes, sir.

Q. Now during the period of time that you were in the service did you happen to be in New York City at any time? A. Yes, sir.

Q. Do you recall approximately when that was?

A. Whenever I could get a leave. [898]

Q. You were there from time to time?

A. That's right.

Q. Where were you stationed, Mr. Kyne?

A. Fayetteville, North Carolina.

Q. Now do you recall an occasion when you were in New York City on leave when you were in contact with Mr. Remmer in New York City?

A. No.

Q. Do you recall an occasion when you were in New York City when you were in telephonic communication with Mr. Remmer?

(Testimony of William E. Kyne.)

A. I used to talk to him on the phone, yes, sir.

Q. I will ask you whether or not on any occasion you learned that you had an interest in a New York night club?

A. Yes, sir.

Q. Now do you recall when that was?

A. I don't remember.

Q. Well, can you place it this way—

A. Well, it was winter—I believe it was towards the end of the year. It was quite cold there.

Q. You were in the service at that time?

A. Yes, sir.

Q. And you stated you were in the service between February, 1945, and June, 1946—would that be toward the end of 1945?

A. That would be it.

Q. Now will you relate the conversation, the telephonic [899] conversation, that you had with Mr. Remmer in that regard?

A. He suggested that I go to this certain address and I asked him, I said, I didn't want to go there in the first place, I just had my own friends to entertain.

Q. And what did he say?

A. So he suggested I go up and take a look at it because I had a piece of the place.

Q. Was that the first information you had on that subject matter?

A. Yes, sir.

Q. What was the name of the place, if you recall?

A. I don't remember.

Q. Did you follow his suggestion and go to the place?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Will you describe the place and business conducted there? A. Just another night club.

Q. Do you recall its location?

A. No, I don't.

Q. Do you know how large a place it was?

A. No, I don't.

Q. Do you recall who the managers or operators of the night club were?

A. Lew Brice, I believe.

Q. Is that the brother of Fanny Brice?

A. Fanny Brice's brother, yes, sir. [900]

Q. Do you recall whether or not there was a second operator there? A. No, I do not.

Q. Do you recall the name of Mattie Silverman?

A. I do not believe I recognize it.

Q. Now had you invested any money in that enterprise? A. No, sir.

Q. Did you at any time? A. No, sir.

Q. Upon the occasion of your visit to that night club, did you learn whether or not you purportedly owned a portion of it?

Mr. Gillen: Just a moment. That would be hearsay. Objected to on that ground.

The Court: Answer that question yes or no.

A. Will you repeat the question?

(Question read.)

A. No.

Q. You had no discussion of that matter with any one? A. No, sir.

Q. Was that the only occasion upon which you visited that place? A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Did you at any time receive any profits from the operation of that night club? A. No, sir.

Q. Or did you at any time receive any profits or distribution [901] of capital from that operation?

A. No, sir.

Q. Now, Mr. Kyne, are you familiar with a business known as 110 Eddy Street? A. Yes, sir.

Q. What is the nature of that business?

A. Tavern.

Q. That is the sole business that is conducted there? A. Yes, sir.

Q. Did you, yourself, have any interest in that business? A. Yes, sir.

Q. What was the extent of your interest?

A. A working interest.

Q. And will you describe what you mean by a working interest?

A. I think I received 25 per cent interest for keeping the books and whatever was necessary to do around the place.

Q. When did you first become interested in the 110 Eddy Street?

A. I think it was about 1942.

Q. Did you have any agreement with any one relative to your working interest? A. No, sir.

Q. Who else had interests in that operation?

A. Well, to start off there was Clarence Bent, Arthur Pratt, Kyne, Remmer, Turner and Cavani.

Q. Were they all at the same time? [902]

A. No, not at the same time.

(Testimony of William E. Kyne.)

Q. Now before the business was taken over, who operated it?

A. Clarence Bent. The place was known as the Crystal Tavern.

Q. Do you recall when it was taken over?

A. No, I don't.

Q. Could you state whether or not, or does the year 1942 refresh your recollection?

A. I believe it was in 1942.

Q. And do you recall the circumstances under which it was taken over?

A. Clarence Bent owed Remmer about over four thousand dollars, I guess it was, and to protect his money he took the tavern over.

Q. And at the time he took it over, as you say, to protect his money, who then became interested in it?

A. Arthur Pratt had one-third of it.

Q. Do you recall what Mr. Pratt paid for it?

A. I believe \$3500, I am not sure.

Q. To whom did he pay that money, do you know?

A. I think to me.

Q. What, if anything, did you do with the money?

A. Probably paid bills.

Q. Well, what is your recollection?

A. Well, we put quite a bit of money into the place.

Q. When you say "we put quite a bit of money into the place," [903] to whom do you refer?

A. Mr. Remmer.

Q. Did you, yourself, put any money into the place?

A. No, sir.

(Testimony of William E. Kyne.)

Q. Did any one else, other than Mr. Pratt, who bought his interest you say for \$3500, did any one else put any money into the place other than Mr. Remmer? A. No, sir.

Q. And aside from Mr. Pratt's \$3500, as expenditures there, by way of improvements or money to operate the business or purchasing stock, stock-in-trade, did any one other than Mr. Remmer pay any money? A. No, sir.

Q. Now how long did Mr. Pratt remain interested in the business?

A. I don't remember. The books should show.

Mr. Campbell: If the Court please, at this time we desire certain records of 110 Eddy Street which are in the clerk's office. I have asked one of the agents to step out with the clerk so they can be readily identified.

The Clerk: I have them right here.

Q. I will ask that these two bound account books be given one number for identification.

The Clerk: 112.

Q. I show you two bound volumes, Mr. Kyne, and ask you to examine those and state if you recognize them? [904]

A. I believe that is Slater's writing.

Q. By Slater, to whom do you refer?

A. The bookkeeper.

Q. Bookkeeper for whom? A. 110 Eddy.

Q. Mr. Slater is now deceased?

A. Yes. He was also bookkeeper for the Day-Night Cigar Store.

(Testimony of William E. Kyne.)

Q. And do you recognize these as being the books maintained for the 110 Eddy Street?

A. Yes, sir.

Q. Now in whose name were the liquor licenses at 110 Eddy Street?

A. I think they were in my name.

Q. Over what period of time?

A. Oh, about a year, I guess.

Q. What year was that?

A. I don't know whether it was '42 or '43.

Q. And in whose name were they after that?

A. Remmer, Kyne, Cavani and Turner.

Q. How long did they continue in those names?

A. Until the place folded.

Q. When was that?

A. I believe it was '47.

Q. What was Turner's first name? [905]

A. Clarence, I think.

Q. And it is Frank Cavani?

A. Frank Cavani, yes, sir.

Q. Now during the years 1944, 1945, and 1946, did Cavani and Turner continue throughout that period to be active in the conduct of the business?

A. Yes, sir.

Q. What were their duties in respect to the business?

A. I believe that Cavani was there in the day time and Turner used to be there at night time.

Q. What duties did they perform there?

A. Manager.

(Testimony of William E. Kyne.)

Q. And what share of the business, if you know, did Cavani have? A. One-fourth.

Q. And what share of the business did Turner have? A. One-fourth.

Q. Now did you receive at any time any of the profits from the operation of that business?

A. No, sir.

Q. Did you at any time report as income to you profits of that business? A. Yes, sir.

Q. And in what years? A. Since '42.

Q. Now with regard to income taxes accruing on such profit as [906] you reported, from what source, if any, did you obtain money to pay taxes?

A. From Slater.

Q. And Slater you refer to the bookkeeper?

A. Yes, sir.

Q. Will you state whether or not on the profit of the 110 Eddy Street which you reported on your return, if you paid out of your personal funds that part of the tax which accrued by reason of reporting that profit?

A. I received the money from 110 Eddy, from Bob Slater, to pay on my interest.

Q. Now I call your attention to government's Exhibit 80, the partnership return of income for the calendar year 1943 of 110 Eddy Street, and ask you if that is your signature attached thereto?

A. Yes, sir.

Q. I call your attention to the "Partner's Share of Income," the ordinary net income having been

(Testimony of William E. Kyne.)

reported \$10,275, which is divided, W. E. Kyne, \$6,850 and Arthur R. Pratt, \$3,425?

A. That is correct.

Q. Will you state what the division of profits for the year 1943 from 110 Eddy Street was?

Mr. Gillen: We offer the objection it is incompetent, irrelevant and immaterial. It is a year prior to the starting point of the indictment. [907]

The Court: Objection will be overruled.

A. The reason we filed this way, we run into quite a bit of difficulty——

Mr. Campbell: No, that is not responsive to my question. Read the question again.

(Question read.)

Mr. Gillen: I think the books speak for themselves, if the Court please. You have a set of books there and the return also speaks for itself. I object on those grounds.

The Court: I think the objection is good. The record will speak for itself.

Mr. Campbell: Yes, your Honor, but I am asking an explanation of that return, which shows two-thirds to one and one-third to another partner.

The Court: What is the question?

(Question read.)

The Court: Objection sustained.

Q. Did you yourself receive the sum of \$6,850 set forth on that account? A. No, sir.

Mr. Gillen: Just a minute——

The Court: The answer may go out.

(Testimony of William E. Kyne.)

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial. Involves the year 1943 and certainly Mr. Campbell knows the taxation of partnership income is based on not what [908] is withdrawn by the partners, but rather on their proportionate interest in the profits of the business and therefore the question is immaterial in determining the correctness of a report of the income. That is the law and I think counsel knows it and I think your Honor is well aware of it too.

The Court: Objection overruled. Answer the question.

(Question read.)

A. No, sir.

Q. Mr. Kyne, does that amount of \$6,850 which is set forth as your share, does that include the share of profits accruing to the benefit of any one other than yourself?

A. That was credited to me on the books.

Mr. Campbell: Will you read the question?

(Question read.)

A. No, sir.

Mr. Gillen: Just a moment—that would be assuming something not in evidence—it is already answered.

The Court: Objection overruled. The answer may stand.

Mr. Gillen: I withdraw the objection.

Q. In order that I may understand the situation then, Mr. Kyne, do I understand the only persons

(Testimony of William E. Kyne.)

interested in the partnership in 1943 were yourself and Mr. Pratt?

Mr. Gillen: We offer the objection to counsel calling for Mr. Kyne's opinion and confusion of Mr. Campbell's understanding. I think a direct question would be who was interested, [909] would cover the situation.

The Court: Objection sustained.

Q. During the year 1943 who were the partners in 110 Eddy Street?

A. Remmer, Kyne, Pratt and Clarence Bent.

Q. In what amounts were they interested?

A. One-third, each had a third.

Q. You have enumerated four people.

A. I was included with Remmer.

Q. Did you have one-half of one-third interest, then Mr. Kyne? A. Yes, sir.

Q. Would you explain the circumstances under which on the partnership return two-thirds of profit are shown as being your distributive share?

A. At that time Clarence Bent died and things were very upset around there, so we just put it in my name.

Q. Now did the two-thirds which is shown there on that return, which you signed in your name, did that belong to you? A. No, sir.

Q. To whom did it belong? A. Remmer.

Q. The entire amount? A. Yes, sir.

Q. The entire two-thirds?

A. That's right. [910]

Q. I will ask you whether or not, however, for

(Testimony of William E. Kyne.)

that year you reported the entire amount of \$6,850 on your own personal return?

A. Will you repeat the question?

(Question read.)

A. I did.

Q. As I understand you, that full amount belonged to Mr. Remmer, is that correct?

Mr. Gillen: Objected to as asked and answered. It is only asked for the purpose of emphasis and I think, may it please the Court, that counsel is proceeding along a line of questions that is going to result in an argument. It has been pointed out, may it please the Court, that in a partnership, whatever is charged to the partner by way of profit, under the income tax law that partner is chargeable in his income tax, whether he receives the money or not. Counsel knows that and we do not want to be placed in the position of persistently offering objections to something that counsel knows.

The Court: I have an idea there may be another point involved in that statement, so the objection will be overruled. You may answer this question.

A. Will you repeat the question.

(Question read.)

Mr. Gillen: Objected to as asked and answered several times.

The Court: Objection overruled. Answer the question. [911]

A. Yes.

Q. Incidentally, who prepared that partnership return? A. Slater.

(Testimony of William E. Kyne.)

Q. And that is the bookkeeper that you referred to? A. Yes, sir.

Q. And who prepared the personal return which you signed? A. Slater.

Q. And I believe you stated, did you not, that Mr. Slater was the person that gave you the money from 110 Eddy to pay your income tax?

A. Yes, sir; he kept the books.

Q. Did you receive any salary from 110 Eddy Street? A. No, sir.

Q. Did you ever, other than money which was given to you in regard to paying income tax on the funds which you reported, or profits which you reported accruing from the 110 Eddy Street, did you ever receive any money from that business operation?

Mr. Gillen: Objected to as having been asked and answered several times.

The Court: Objection overruled. Answer the question.

A. No, sir.

Q. I am going to show you plaintiff's Exhibit 81 for identification, partnership return of income for 110 Eddy Street for the year 1944, and ask you if that is your signature? A. Yes, sir. [912]

Q. And by whom was that return prepared?

A. Slater.

Q. I show you plaintiff's Exhibit 82, partnership return of income for the year 1945, which was filed March 15, 1946, you were in the army at that time?

A. Yes, sir.

Q. Do you, however, recognize the signature

(Testimony of William E. Kyne.)

which is attached thereto, signature purportedly to be that of Frank Cavani, do you recognize that?

A. No, I do not.

Q. Do you recognize the signature of Harold Maundrell? A. No, I do not.

Q. Do you know Harold Maundrell?

A. He is in court.

Q. What connection, if any, did he have with this, or any of the other organizations in which you and Mr. Remmer had an interest?

A. He was Mr. Remmer's bookkeeper.

Q. Do you recall approximately when it was that Mr. Slater died? A. No, I do not.

Q. Can you state whether or not Mr. Maundrell replaced Mr. Slater as bookkeeper in the various enterprises? A. Yes, he did.

Q. I call your attention to Exhibit 83, 1946 partner's return of income for 110 Eddy Street and signed Frank Cavani, and call [913] your attention to the signature on the return of the person who prepared the return, C. D. Ayton, P.A., and ask you if you know who Mr. Ayton is?

A. Yes, I do know Mr. Ayton.

Q. Who was he?

A. He was a certified public accountant.

Q. Was he a certified public accountant or public accountant? A. I am pretty sure he was.

Q. That was your understanding?

A. Yes, sir.

Q. What relation, if any, did he have with these businesses?

(Testimony of William E. Kyne.)

A. He was bookkeeper for the Menlo Club.

Q. Do you know over what period of time?

A. I believe he was bookkeeper for Joe Bailly, who owned the Menlo Club before Mr. Remmer had it.

Q. Did he continue to work in connection with the Menlo Club books?

A. He used the same bookkeeper, yes, sir.

Q. During the years 1945 and 1946 by whom, if you know, was Mr. Ayton employed?

A. By Remmer.

Q. Can you state whether or not he was employed simultaneously with Mr. Maundrell?

A. Yes, he took care of the income tax returns.

Q. Who? [914] A. Mr. Ayton.

Q. Did he maintain any of the records himself, that is to say, as to making records therein?

Mr. Gillen: In 1945 and 1946?

Mr. Campbell: 1944, 1945 and 1946.

Mr. Gillen: Just a moment. It has been established Mr. Kyne was in the army for over a year, so that would certainly be asking for conclusion.

Mr. Campbell: I asked if he knew, and during such periods from 1944, 1945 and 1946 when he was there.

The Court: He may answer if he knows.

A. I believe Mr. Ayton made the returns starting with 1945.

Q. Do you know if that was his only employment, or did he also keep books and records?

A. That I don't know.

(Testimony of William E. Kyne.)

Q. Is Mr. Ayton alive today?

A. No, he is not.

Q. Do you recall when he died?

A. No, I do not.

Q. Now with regard to Mr. Pratt's association with this business, do you recall where Mr. Pratt resided? A. Where he resides now?

Q. No, where he did in 1943? A. Vallejo.

Q. Do you recall how long Mr. Pratt continued to be connected [915] with the business after it was taken over by Mr. Remmer in 1942?

A. No, I don't.

Q. I call your attention to government's Exhibits 80 and 81, upon both of which you have identified your signature, and to the fact in 1943 return the partners are listed as yourself and Mr. Pratt, while in the 1944 return, Exhibit 81, the partners are listed as yourself, Cavani, Turner and Remmer. Does that refresh your recollection as to when Mr. Pratt ceased to be connected with the business?

A. I don't know the exact date that Mr. Remmer bought him out.

(Jury and alternate jurors admonished and short recess taken at 11:00 o'clock.)

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Campbell: At this time I am going to offer these two exhibits in evidence.

Mr. Golden: To which we object upon all the grounds of illegality as heretofore urged. I think the record is clear.

The Court: Yes. The objection will be overruled and Exhibit 112 is admitted in evidence. [916]

Q. Now, Mr. Kyne, I call your attention to the fact that in the books which have heretofore been introduced in evidence as Exhibit 112, the account of W. E. Kyne is listed as W. E. Kyne, Trustee. Do you know to what that refers?

A. Well, I was in charge of the place, the money end of it.

Q. And is that the meaning of the term "trustee" which is used there?

Mr. Gillen: Objected to as calling for opinion and conclusion of the witness. It has been established here that this set of books was kept by a bookkeeper named Slater and apparently whatever Mr. Slater chose to set Mr. Kyne up, whether he

(Testimony of William E. Kyne.)

chose to call him trustee or what, would be Mr. Kyne's conclusion. Bookkeepers, we all know, have their own way of setting up accounts, and it is calling for conclusion.

The Court: Objection overruled. Answer the question.

Q. What is your answer, Mr. Kyne?

A. I was in charge of the place, trustee or whatever expression you want to use.

Q. Did you take any active part in the management of the bar? A. Yes, sir.

Q. To what extent?

A. You mean at the time of going in there?

Q. During the period set forth in that account, which runs from December 31, 1942, to the last entry in here, May 31, 1944?

A. Well, at first I was responsible for the bills and everything, [917] and after it got rolling I just let it roll.

Q. Will you state whether or not you maintained a bank account in connection with that business? A. Yes, sir.

Q. And where was that bank account maintained? A. Day and Night Bank.

Q. Under what name was it maintained?

A. 110 Eddy, I believe; I am not sure.

Q. And who were the authorized signators on that account? A. I signed the checks.

Q. Was anyone else authorized to sign the checks on that account? A. I do not remember.

Q. I call your attention to government's Exhibit

(Testimony of William E. Kyne.)

32, which consists of the ledger sheet of account with the Bank of America for 110 Eddy, 110 Eddy Street, San Francisco, California, and to the signature cards attached thereto, and ask you if that is a record of the bank account to which you refer?

A. I believe that is it; yes, sir.

Q. I call your attention to the fact that the authorized signatures at various times upon that account show signatures of Frank Cavani, T. C. Turner, William E. Kyne, and Slater; does that refresh your recollection as to the various signatures that were authorized on that account?

Mr. Gillen: I think the exhibit speaks for [918] itself.

The Court: Objection will be overruled. Answer the question.

A. This is the time I am speaking of. I was the only one that had a bank account.

Q. You are referring to this card which is dated September 23, 1942, when you were the only authorized signator; is that correct? A. Yes, sir.

Q. Now subsequently were other signatures authorized on that account, if you know?

A. Yes, sir.

Q. And they included the individuals to whom I referred? A. Yes, sir.

Q. Now do you know whether or not any other bank accounts were utilized in connection with that operation? A. I do not believe so.

Q. Will you state whether or not any safety deposit box was utilized in connection with the 110

(Testimony of William E. Kyne.)

Eddy Street? A. No, they had a safe.

Q. That safe was located on the premises?

A. Yes, sir.

Q. Now directing your attention to the fact that the books which have been produced here bear no entries of any date subsequent to 1945, will you state, if you know, whether or not records were maintained for the year 1946? [919]

A. I do not know.

Q. Do you know who the bookkeeper was for the enterprise in 1946? A. Harold Maundrell.

Q. Can you state whether or not you ever saw books and records pertaining to the 110 Eddy Street for the year 1946? A. No, sir.

Q. Now after that business was acquired, Mr. Kyne, were certain improvements made?

A. Yes, sir.

Q. Do you recall when those improvements were made? A. 1942.

Q. And who, if anyone, supplied the money for those improvements? A. Mr. Remmer.

Q. Now can you state whether or not those premises upon which the 110 Eddy Street business was conducted were leased from anyone?

A. I forget the name of the estate we leased it from.

Q. Do you recall the amount of the rent?

A. No, I don't.

Q. Did you have anything to do with the payment of the rent? A. No, sir.

(Testimony of William E. Kyne.)

Q. Do you recall whether or not you signed checks in payment for rent? [920]

A. I think I would have in the course of business.

Q. Who, if anyone, prepared the checks for the rent? A. I imagine Slater would.

Q. In regard to the bank account upon which you were the only signator, who prepared the checks relative to expenses or other operating costs which you signed? A. Slater.

Q. Who, if anyone, would present the checks to you for your signature? A. Slater.

Q. Will you state whether or not, after the 110 Eddy Street operations were acquired by Mr. Remmer, if additional premises were secured for the purpose of enlarging the business?

A. Yes, sir; we leased the store next door to 110 and broke the wall through and made a large circular bar.

Q. Do you recall the cost of this improvement?

A. No, I do not. I think the books will show.

Q. What is your best recollection?

A. I do not remember.

Q. I believe you stated Mr. Remmer advanced the money for that purpose? A. Yes, sir.

Q. Do you know whether or not salaries were paid to Turner and Cavani?

A. Yes, sir. [921]

Q. What was the amount of those salaries?

A. Either \$75 or \$100 a week; I am not sure.

(Testimony of William E. Kyne.)

Q. You identified them, I believe, as one the day manager and the other the night manager?

A. Yes, sir; that's correct.

Q. During that portion of the years 1944 to 1946, inclusive, when you were in San Francisco, do you recall how many bartenders were utilized in that business?

A. I believe night time there was two bartenders.

Q. And in the daytime? A. One.

Q. Did either Turner or Cavani serve in that capacity? A. No, sir.

Q. Were you familiar with the operation known as the Menlo Club? A. Yes.

Q. When, if you know, was that acquired?

A. I don't remember — the year 1945 — I was away at the time.

Q. Was that acquired, if you know, while you were in the service? A. Yes, sir.

Q. Now when you returned from the service were you advised by anyone that you had an interest in that establishment? A. Yes, sir.

Q. By whom? [922] A. Mr. Remmer.

Q. And I will ask you whether or not you were given some written agreement with relation to the interest Mr. Remmer told you had? A. I was.

Q. You have that? A. Yes, sir.

Q. Will you produce it?

A. I haven't it.

Q. I beg your pardon?

A. It is in the bank.

Q. Now, Mr. Kyne, you were served with sub-

(Testimony of William E. Kyne.)

poena, were you not, to produce any records of any partnership you had with Mr. Remmer?

A. Yes, sir.

Q. But you did not produce that record?

A. I did not think it necessary. I believe I gave the agents photostats of it.

Q. You did not think it necessary to produce the original document? A. No.

Q. In what bank is that document located?

A. I think it is in the safe deposit box here in Reno.

Mr. Gillen: Mr. Kyne stated he thought he gave the agents photostatic copies. We have no objection, to facilitate [923] the examination, if Mr. Campbell will use the photostatic copies.

Mr. Campbell: Yes, I will do that, but I wish to explore this situation further.

Mr. Gillen: I don't know what there is to be explored.

The Court: There is nothing before the Court.

Mr. Gillen: May I make this statement?

The Court: There is nothing before the Court.

Mr. Gillen: Counsel is going to explore——

The Court: There is nothing before the Court.

Q. Mr. Kyne, you were requested to produce in the subpoena all records of any description relating to the income tax liabilities of either Elmer F. Remmer or Helen L. Remmer for the years 1944 to 1946, inclusive, records of any partnership or other businesses in which Elmer F. Remmer was engaged. Have you produced any records in response to that subpoena?

(Testimony of William E. Kyne.)

A. Since 1946, Mr. Campbell, I have given the government agents every record they asked for.

Q. I understand, but have you in your possession at this time any such records?

A. Not on me, no; it is in the safe deposit box.

Q. Can you produce those original records, Mr. Kyne? A. Yes, sir.

Mr. Campbell: I do not mean to infer that this witness has not been cooperative. [924]

Mr. Gillen: Oh, no. We have no objection to the photostatic copy being used.

Q. I am going to show you a photostatic copy of a document and ask you if that is the photostatic copy of the document to which you refer, relative to your interest in the Menlo Club?

A. Yes, sir.

Mr. Campbell: I will offer this in evidence as government's Exhibit 113.

The Court: It may be admitted in evidence.

Mr. Gillen: No objection.

Q. Mr. Kyne, can you identify the two signatures on there? A. Yes, sir.

Q. Whose signatures are they?

A. Remmer and Kyne.

Q. And by Kyne you refer to yourself?

A. Yes, sir.

Q. And by Remmer you refer to Elmer Remmer? A. Yes, sir.

Q. Do you know by whom this document was prepared? A. Joseph Haughey.

(Testimony of William E. Kyne.)

Q. That is the Joseph Haughey who appeared here? A. Yes, sir.

Mr. Campbell: At this time I should like to read plaintiff's Exhibit 113. (Reads Exhibit 113.)

Q. Mr. Kyne, did you at any time invest any money in the [925] Menlo Club? A. No, sir.

Q. Did you at any time draw any money by way of salary or profit from the Menlo Club?

Mr. Avakian: Your Honor, we again object to that question on the ground it is incompetent, irrelevant and immaterial in this case involving income tax of Mr. Remmer, whether one of the partners actually withdrew his profit or left it in the business to build up his equity. It is immaterial for income tax purposes whether a partner draws his profits or leaves it in the business. He still has to pay tax. It may draw it out or build up his equity, it is immaterial; he still has to pay taxes. He has to pay taxes not on the basis of what he withdraws, but on the basis of what his share is, whether it is left in the business or taken out.

Mr. Campbell: I object to a speech.

The Court: Objection overruled. Answer the question.

Mr. Avakian: May I assign as misconduct the remark of counsel I was making a speech? I have a right to state the grounds of my objection.

The Court: You may. Objection overruled and the witness may answer the question.

(Question read.)

(Testimony of William E. Kyne.)

A. No, sir.

Q. Will you state, Mr. Kyne, whether or not, as of [926] December 31, 1946, there had been returned to Mr. Remmer, as called for in this agreement, the sum of 175 thousand dollars?

A. I wouldn't know.

Q. Do you know whether or not, as of December 31, 1946, your 15 per cent interest in the business had come into being?

A. Will you repeat that, please?

(Question read.)

A. I wouldn't know that.

Q. Now, Mr. Kyne, do you know whether or not a bank account was maintained for the Menlo Club?

A. I believe there was; yes, sir.

Q. And in what name was it maintained?

A. I think there was one bank account in my name and one in Harold Maundrell's.

Q. In your personal names, as you recall?

A. Yes, sir.

Q. And where was the bank account which was in your name?

A. It was the Day and Night branch of the Bank of America, No. 1 Powell Street.

Q. Was there more than one authorized signator on that account?

A. That I don't remember.

Q. Do you know where the bank account in the name of Harold Maundrell was maintained?

A. I believe it was at the Crocker Bank.

Q. Were you the authorized signature on that account? [927]

A. I do not remember.

(Testimony of William E. Kyne.)

Q. Were you familiar with the business prior to your return from the army? A. No, sir.

Q. Now after you returned from the army, did you take any active part in the operation of that business? A. Yes, sir.

Q. What was the nature of your activity?

A. For a while I kept the monies and the records pertaining to the Menlo Club.

Q. By records do you refer to books of account?

A. No, just the money and the sheets.

Q. By sheets to what do you refer?

A. Daily record.

Q. What was the business of the Menlo Club?

A. Social club, card room.

Q. You say social club, card room; were there licenses in connection with that business?

A. I believe they had some kind of a permit.

Q. Do you know whose name that was in?

A. No, I don't.

Q. I will ask to have these three sets of sheets headed "Poker" marked Exhibits for Identification 114, 114A and 114B, respectively. What were the business hours of the Menlo Club?

A. Open twenty-four hours a day. [928]

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

December 17, 1951—1:45 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Kyne, prior to the recess you had been testifying concerning the Menlo Club and you referred to sheets which were delivered to you. I am going to show you government's Exhibits 114, 114A and 114B for identification and ask you first if you recognize this type of record? A. Yes, sir.

Q. And I will ask you if those were the type of sheets which you referred to as having been delivered to you daily from the Menlo Club?

A. Yes, sir.

Q. What is the nature of those sheets?

A. Well, I am not too well acquainted with them, Mr. Campbell. There are markers and also record of the employees here.

Q. Now when such sheets were delivered to you, what did you do with them?

A. Bundled them up and put them in a box.

Q. Did you make entries into any other records from them? [929] A. No, sir.

Q. Do you know whether or not the figures set forth on those sheets, or any of the figures, were entered into any books? A. No, sir.

(Testimony of William E. Kyne.)

Q. You do recognize these as sheets from the Menlo Club? A. Yes, sir.

Mr. Campbell: They will be offered in evidence under the numbers heretofore given, 114, 114A and 114B, respectively.

Mr. Gillen: Just a moment. I would like to examine the witness on voir dire before they are admitted in evidence, your Honor.

The Court: You may do so.

Q. (By Mr. Gillen): Mr. Kyne, will you look at those sheets and tell us whether or not you actually recognize them as sheets from the Menlo Club or types used?

A. There are names on there of employees—Joe Atkinson—that I recognize they work at the Menlo Club.

Q. Can you say from your own knowledge whether those are sheets from the Menlo Club?

A. Well, it is the type sheet that was used over there, and I know most of these names.

Q. Do you know whether, from looking at this, those are some of the sheets that you turned over to the Internal Revenue agents that they promised to return to you?

A. I wouldn't know that. [930]

Q. You wouldn't know that?

A. I am just recognizing the employees' names here.

Q. Was it your testimony, Mr. Kyne, that because the type of sheets look the same and because you recognized some of the names on the sheets,

(Testimony of William E. Kyne.)

you concluded from that that they must have come from the Menlo Club? A. Yes.

Mr. Gillen: I think, your Honor, they are not properly identified.

Mr. Campbell: I renew my offer.

The Court: Objection overruled. Admitted, 114, 114A, 114B.

Mr. Golden: May it be understood, your Honor, that we have the same standing objection to those records on the ground that they were illegally obtained and promised to return them?

The Court: If you want that objection in this record, too, you may have it.

Q. (By Mr. Campbell): Mr. Kyne, I call your attention to government's Exhibit 114, which consists of two sheets, both dated January 1, 1946, and in the upper left-hand portion of this sheet appears the heading, "Mine Alone," under which appears certain figures, against which there is a column headed "Name" and certain names bearing "Return," with certain amounts set forth, "ours" and "ours." Do you know to what that refers?

A. No, I do not. [931]

Q. Do you recognize any of the names appearing herein—one of Miller; do you recognize the name Miller?

A. I recognize Olson, Fricker; not Miller.

Q. Referring to this portion, the upper left-hand portion, first page?

A. Fricker worked for the Menlo Club; and I also recognize Oscar Nelson.

(Testimony of William E. Kyne.)

Q. Did he also work for the Menlo Club?

A. He was the manager.

Q. Do you recognize any of the other names in that column, upper left-hand column?

Mr. Gillen: Is that the same exhibit?

Mr. Campbell: Yes, the same exhibit.

A. No, sir; those are all the names that I recognize.

Q. Do you know what is meant by "Mine alone," set forth against your name?

A. No, I do not.

Mr. Gillen: Objected to as asked and answered.

The Court: He has already answered the question; he didn't know.

Q. Do you know what is meant by these amounts set forth under the heading "Return"?

Mr. Gillen: Objected to on the same ground, already asked and answered.

The Court: Objection overruled. [932]

A. I believe it refers to the time, but I am not sure.

Mr. Gillen: I move it be stricken if he isn't sure.

The Court: It may go out.

Q. Now calling your attention to the figures at the bottom of the left-hand column, "Sheet Win \$75.50," do you know what that refers to?

A. No, I wouldn't know.

Q. You don't know? A. No, sir.

Q. I call your attention to the initials BR \$10,000; do you know what that refers to?

A. No, I wouldn't know.

(Testimony of William E. Kyne.)

Q. I call your attention to the language, "New top"; do you know to what that refers, \$10,075?

A. No, I wouldn't know.

Q. I call your attention to the names appearing under the heading "Incidentals," number of names with certain amounts, ranging from \$6 to \$20, appearing opposite the name, and ask you if you recognize any of those names?

A. I recognize about three names on here.

Q. Which names do you recognize?

A. Fricker, Nelson and Atkinson. He is not here on this sheet. Those are names I recognize as employees.

Q. Was Atkinson also an employee?

A. Yes, sir. [933]

Q. I call your attention to the second page dated January 1, 1946, to the language appearing, "Sheet Win \$265.50"; do you know what that means?

A. No, I don't.

Q. The "Old top," \$10,075? A. No, sir.

Q. And the figure, "Cash \$10,341"; do you know what that means? A. No, sir.

Q. Were you present at any time during the making of records, either this or similar records?

A. No, sir. They were made three times a day.

Q. Will you explain that; how did that come about?

A. Three eight-hour shifts, and whoever came on to work in the cage made out his own sheets.

Q. So that, for example, calling your attention to plaintiff's Exhibit 114A, which consists of three

(Testimony of William E. Kyne.)

sheets, all dated December 31, 1946, will you examine those and state whether or not they represent the three shifts for that date?

Mr. Gillen: I imagine, your Honor, the shifts are around the clock; the third shift would be in the morning of January 1, 1947. It wouldn't be all three shifts under one date; if there were three 8-hour shifts, one would be after midnight.

The Court: It might start at 12:01?

Mr. Gillen: That is right; there would be two different dates at least. [934]

Mr. Campbell: Not necessarily.

The Court: Well, you may proceed.

A. That looks like a complete set for 24 hours.

Q. Could you state, from your knowledge of the operation of the club, what 24 hours would be covered by a set of three shifts bearing the same date?

A. Wherever you start her off at, from 12 to 12.

Q. That is my inquiry; when did you start her off?

A. That I don't know.

Q. After you returned from the service, Mr. Kyne, what portion of your time was spent at the Menlo Club?

A. About five minutes each day.

Q. And what duties did you perform there in that five minutes?

A. I received whatever money was left in the safe.

Q. And what did you do with it?

A. Put it in my box.

Q. And which box? A. 48.

(Testimony of William E. Kyne.)

Q. That is the box of the Day and Night branch of the Bank of America? A. Yes, sir.

Q. I believe you testified that you and Mr. Remmer had access to that box? A. Yes, sir.

Q. Can you state whether or not that money was subsequently all [935] transferred to the bank account?

A. I think in October we opened up a bank account.

Q. After the bank account was opened were the entire daily receipts placed in the bank account?

A. I don't remember.

Q. Let me ask you this—when you stopped by there daily to pick up the money, did you place in the safety deposit box all of the money that you picked up? A. Not always; no, sir.

Q. What would you do with money which you did not place in the safety deposit box?

A. If I needed it in some other spot I used it.

Q. When you say when you needed it in some other spot, was that for your personal use?

A. No, sir.

Q. What was the use of that?

A. Went to 110 Eddy Club or the 186 Club, or Day-Night Cigar Store.

Q. Did you retain any of that money for your personal use? A. No, sir.

Q. Will you *state or* not more was placed in the bank than was required to pay current accruing bills? A. Most of it went to the bank.

Q. At the time you picked up the money at the

(Testimony of William E. Kyne.)

Menlo Club, did you check it against the daily [936] sheets? A. No, sir.

Q. From whom would you receive the money when you picked it up?

A. It was put in the safe.

Q. By whom?

A. By anyone who was in charge on the last shift.

Q. Will you name those individuals during that period of time when you came back from the service and up until the end of 1946?

A. Joseph Silva and Oscar Nelson.

Q. You referred to Oscar Nelson as a manager. Did he have any particular period of time in which he served in that capacity?

A. Usually night time.

Q. And what period during the period of day did Silva serve? A. Night also.

Q. Who, if anyone, served in the day time?

A. Fricker is the only one I can think of right now.

Q. In what manner would money be left in the safe for you? A. Usually in an envelope.

Q. Will you state whether or not there was any accounting slip of any kind in that connection?

A. A total written on the envelope.

Q. You say after the bank account was opened that you were the authorized signator on one of the two accounts? A. Yes, sir.

Mr. Campbell: May I have check dated November 7th marked [937] 115 for identification.

(Testimony of William E. Kyne.)

Q. I show you this exhibit, Mr. Kyne, 115 for identification, and ask you if you recognize that?

A. Yes, sir.

Q. Is that your signature appearing as drawer of the check? A. Yes, sir.

Q. And is that also your signature appearing as endorser of the check? A. Yes, sir.

Q. And on what account was this check drawn?

A. Menlo Club.

Q. What, if anything, did you do with the proceeds of the check?

A. Gave it to Mr. Remmer.

Mr. Campbell: I will ask that this be received in evidence as government's Exhibit 115.

Mr. Golden: Same objection, your Honor, on the grounds it is illegally acquired and retained.

The Court: Objection overruled and exhibit is admitted in evidence.

Q. Now, Mr. Kyne, I call your attention to the fact that this is check dated November 7, 1946, payable to W. E. Kyne in amount of 65 thousand dollars, signed Menlo Club, Wm. E. Kyne, and in typing on the side, "Apply to Elmer Remmer." Did you type up this check?

A. Yes, sir. [938]

Q. At whose request? A. Mr. Remmer.

Q. I notice it bears your endorsement on the back. Did you cash this check? A. Yes, sir.

Q. And did you receive cash for it from the bank? A. Yes, sir.

Q. And I believe you stated you turned the cash over to Mr. Remmer? A. Yes, sir.

(Testimony of William E. Kyne.)

Q. And on what date?

A. Same day it was issued.

Q. Where did you cash it? I notice the bank perforation is November 8, 1945.

A. It was Day and Night branch; they probably carried it over through the morning hours.

Q. Do you know what was done with this money? A. No, I don't.

Q. Do you recall the form in which you received 65 thousand dollars?

A. I think it was in thousand dollar bills; I am not sure.

Q. What is your best recollection?

A. Large bills.

Q. And where did you deliver that to Mr. Remmer? A. 50 Mason Street. [939]

Q. Now for the moment I wish to refer back, Mr. Kyne, to the B & R Smoke Shoppe.

Mr. Avakian: May I inquire of counsel whether he has concluded questioning the witness regarding that particular check?

Mr. Campbell: Not necessarily.

Mr. Avakian: When it was concluded, we assumed it would be connected. If he is not through, I will reserve my motion.

The Court: Proceed.

Q. Incidentally, Mr. Kyne, what do the initials B. R. of B & R Smoke Shoppe stand for?

A. Bank roll.

Q. Who, incidentally, decided on that name?

Mr. Gillen: What difference would it make? In-

(Testimony of William E. Kyne.)

competent, irrelevant and immaterial. It is something started back in 1942.

The Court: I think so. I agree with counsel. Objection sustained.

Mr. Campbell: Very well.

Q. Coming back for a moment to the lay-off bets, that is, lay-off bets you made and lay-off bets received by you from others. How often were settlements had as between yourself and other bookmakers?

A. It varied from one day to a month. [940]

Q. And what form did those settlements take, Mr. Kyne?

A. I usually paid off with a cashier's check.

Q. You say usually—was there any other method of paying off?

A. If a party was in town and wanted cash, I usually give it to him.

Q. In what manner were you paid off on what was coming in?

A. Cash or cashier's check.

Q. The same manner? A. Yes, sir.

Q. Now so far as arrangements for lay-off, or accepting lay-off bets from others, who made those arrangements?

A. Either the party producing new players or—

Q. So far as other bookmakers were concerned?

A. Will you repeat that question?

A. Through people I knew or Mr. Remmer or Mr. Lando.

(Testimony of William E. Kyne.)

Q. Now so far as your payments were concerned, where were the cashier's checks purchased?

A. Most of them at the Day and Night Branch, Bank of America.

Q. I wish to have these checks marked government's next exhibit for identification in order.

Clerk: 116.

Mr. Avakian: Your Honor, counsel handed us additional sheets, one packet relating entirely to 1942 and another packet entirely to the year 1943. May we inquire whether counsel intended to go ahead with those two years also? [941]

Mr. Campbell: Yes.

Q. I am going to hand you these sheets, Mr. Kyne, and ask you if you recognize them?

A. Yes, sir.

Q. What do they purport to represent, without stating the items?

A. Payments to bookmakers.

Q. Will you state whether or not that is by way of cashier's checks which were purchased?

A. Yes, sir; that is a record of the bank.

Mr. Campbell: I am going to ask that these be received in evidence, with the exception—I am going to withdraw this last page upon which the clerk has placed his stamp, and as to the last page which now remains, only the items running to December, 1946. The balance we will arrange to black off in some way.

Mr. Gillen: I would like to examine this witness on voir dire in regard to these accounts, may it

(Testimony of William E. Kyne.)

please the Court, before they are admitted in evidence.

The Court: You may do so.

Q. (By Mr. Gillen): Mr. Kyne, will you look at those sheets and tell us whether or not you personally prepared those sheets?

A. No, sir. I imagine the Bank of America prepared them.

Q. You imagine the Bank of America [942] prepared them? A. Yes, sir.

Q. You don't know of your own knowledge who prepared them? A. No, I do not.

Q. Had you seen those before coming to court?

A. I believe I did see this one here.

Q. When, where, and under what circumstances?

A. Each year I used to pay the clerks at the Bank of America so much to go through their files to give me a complete record what checks were purchased, and that is one of the records.

Q. I think you recognized the year 1943 for checks purchased in 1942? A. Yes, sir.

Q. Do you recognize any other?

A. No, these other two I do not.

Q. So it is your belief that these sheets which Mr. Campbell handed you are probably sheets that were prepared for you by somebody in the Bank of America as a special courtesy, at your request?

A. Yes, sir; a record.

Q. To give you a record of cashier checks purchased? A. All checks going out.

Q. Now you are not in position to say whether

(Testimony of William E. Kyne.)

or not this truly reflects all the cashier's checks that you purchased? A. No, I am not.

Mr. Gillen: I will offer the objection, may it please [943] the Court, that these records which are offered are records which were not either prepared or kept by Mr. Kyne in the ordinary course of his business, or that it was his business to keep those records; that he believes they comprise records that he had prepared as a special courtesy to him, in order to enable him to try to keep track of his affairs; that they were prepared by some other persons; that he does not know the accuracy or correctness of those records, and I do not think under those circumstances they could be identified as evidence of what they are claimed to portray and, of course, as your Honor readily recognizes, under those circumstances we are left bereft of any opportunity to cross-examine whoever prepared them from whatever records and therefore deprived of that cross-examination, so I do not think Mr. Kyne is the witness who can properly establish the foundation, or would he establish the foundation, for admission of such documents in evidence. Your Honor will recall that we had a man here from the Bank of America who produced a goodly number of records here and identified them, had familiarity with them, and that is one of the few witnesses who had complete familiarity with what he brought into court.

Mr. Campbell: I object to the last statement. I think that is uncalled for.

(Testimony of William E. Kyne.)

The Court: I think that ought to be stricken. It will be stricken from the record, that last [944] statement.

Mr. Gillen: I mention that because your Honor recognized it and became irritated with the lack of knowledge——

The Court: Objection will be overruled.

Mr. Campbell: I would like to ask further questions of the witness.

The Court: You may do so.

Q. (By Mr. Campbell): Mr. Kyne, will you examine these sheets, which consist of a large number of items, and will you state whether or not the items set forth here of cashier's checks purchased in the amounts stated and upon the dates stated to the best of your recollection?

A. I believe that is a record of cashier's checks——

The Court: Wait a minute—do you want to make an objection?

Mr. Gillen: Your Honor, that still does not cure the lack of foundation. Some of those names might be names he recognizes as people he sent cashier's checks to, but in toto the last question propounded by Mr. Campbell would not cure the lack of foundation and would not enable us to cross-examine the proper person.

The Court: Objection overruled. Let us have the question read.

A. I believe this is a record of cashier's checks I purchased at the Bank of America.

(Testimony of William E. Kyne.)

Mr. Campbell: I renew my offer.

Mr. Golden: May I inquire further on voir dire?

The Court: Yes. [945]

Q. (By Mr. Golden): Mr. Kyne, do you know that this is record of cashier's checks that you purchased from the Bank of America during the years that are set forth on these sheets?

A. I couldn't swear to it, but those are the names of people I did business with.

Q. Do you know whether it comprises a complete list?

A. I paid for a complete list from the bank.

Q. My question is, do you know whether it comprises a complete list, of your own knowledge?

A. I do not know. I paid for a complete list.

Q. I understand you asked the man to give you a complete list and paid him for it? A. Yes.

Q. But you did not look at the bank records yourself? A. No.

Q. You relied on him to supply it?

A. Yes.

Q. You don't know how many errors, how many wrong amounts may be represented, how many names left out or how many other names picked up that didn't belong there? A. No, sir.

Mr. Golden: I submit, your Honor, we are in a position where we are not able to cross-examine, if this exhibit is allowed to go into the record, the person who prepared it. Mr. Kyne cannot say this is an accurate list. He paid [946] someone especially to do that work, but he did not go over the

(Testimony of William E. Kyne.)

records and cannot say whether he got a correct list or not.

The Court: Objection is overruled. The exhibit will be admitted.

Mr. Gillen: May I have another objection to admission of the exhibit upon the same grounds urged so frequently, the illegality of obtaining and retaining of the documents by the Internal Revenue Department?

The Court: Yes, that objection will be considered as made. Objection overruled. Exhibit admitted in evidence.

Q. (By Mr. Campbell): Mr. Kyne, did you maintain any record of the cashier's checks received by you in connection with the B & R Smoke Shoppe? A. No, sir.

Q. You understand I refer to payments made by others to the B & R Smoke Shoppe; is that correct?

A. Yes, sir.

Q. Now when you received cashier checks——

Mr. Gillen: May I interrupt a minute, may it please the Court. I think for the record I should add to my objection, although your Honor has already ruled, if you will permit me to do so.

The Court: You may do so.

Mr. Gillen: I should add that this exhibit is entirely [947] hearsay. In other words, it is not the best evidence. The best evidence would be the bank records of the bank, of which we had many produced of the identical exact cashier's checks produced by this witness over the period of time, and

(Testimony of William E. Kyne.)

also urge again to your Honor that we are absolutely powerless to cross-examine on accuracy, and also they were produced not by the witness on the witness stand as records, but they were produced by Mr. Campbell, the prosecutor. Of course, your Honor can see that Mr. Kyne could have made his own record every time he purchased a cashier's check, then we would be in position to cross-examine him, but he called on somebody else to make a record for him, and there we are.

The Court: The objection is overruled and the ruling admitting the exhibit in evidence will stand.

Mr. Gillen: Is that all one exhibit?

Mr. Campbell: That is one exhibit, with the exception of those items appearing after date of December 31, 1946, which I will arrange to black out.

Mr. Gillen: I wonder if we might find out how many sheets there are in that exhibit?

Mr. Campbell: 27 sheets.

Mr. Gillen: I think also, your Honor, that we should specifically object——

The Court: I am not going to entertain any further objections. [948]

Mr. Gillen: This is a new objection just called to my attention.

The Court: No, I think objection should be made when the exhibit is offered. I do not want to hear any more.

Mr. Gillen: There are two earlier years in there, your Honor.

(Testimony of William E. Kyne.)

The Court: I do not want to hear any other objections.

Mr. Gillen: Well, I move to strike that portion of the exhibit that refers to the years 1942 and 1943, as being beyond the scope of the time bracket fixed in the indictment, which we will recall was 1944 to 1946, inclusive.

The Court: The motion is denied.

Q. Mr. Kyne, did you have anything to do with the preparation of Mr. Remmer's personal income tax returns? A. No, sir.

Q. I am going to show you defendant's Exhibit H, a letter dated March 7, 1947, which purports to be a carbon copy of letter dated March 7th under the signature of Pat Mooney, and ask you if you received the original of that letter?

A. I do not remember.

Q. Do you remember ever having seen the original of that letter? A. I do not remember.

Q. Mr. Kyne, are you familiar with the operations known as the 186 Club and the Day-Night Cigar Store? [949] A. Yes, sir.

Q. Do you recall when they were acquired?

A. Either '42 or '43.

Q. Do you recall from whom they were acquired?

A. Max Silverman.

Q. I am going to call your attention to government's Exhibit 20, document dated February 4, 1943, and bearing the typed signature of Max Silverman and Willie Kyne, and ask you if you recall that document?

(Testimony of William E. Kyne.)

A. I don't remember that paper, but that was the price for the back room.

Q. The amount set forth here of 16 thousand dollars?

A. Yes, sir.

Q. You say that was the back room?

A. Yes, sir.

Q. Does the date February 4, 1943, which is set forth on this document, refresh your recollection as to the date that that business was acquired?

A. About that time; yes, sir.

Q. That will be your best recollection?

A. Yes, sir.

Q. Now you refer to the back room; was there also a front room; also a business in the front room, was there not?

A. Yes, sir; Day-Night Cigar Store.

Q. And the room in back was known as the 186 Club? [950]

A. Yes, sir.

Q. Now you have stated the price for the back room was 16 thousand dollars. Do you recall who put up the money?

A. Carl Nealis and Jess Kopstick.

Q. Did you handle the money yourself?

A. Either gave the money to Elmer Remmer or myself.

Q. Did you transmit the money to Mr. Silverman?

A. Yes, sir; in the form of cashier's check.

Q. Did you purchase the cashier's check?

A. I believe so.

(Testimony of William E. Kyne.)

Q. Do you recall in what form Mr. Kopstick and Mr. Nealis put up the 16 thousand dollars?

A. Probably cash.

Q. Do you recall where you purchased the cashier's check?

A. I think it was the Bank of America.

Q. Now at the time that was acquired, that is the back room, 186 Club, in approximately February, 1943, who was interested in that club?

A. There were seven people in all.

Q. Who were those seven people?

A. Jess Kopstick, Carl Nealis, Attilio Casselini, Bert Bustrano, Elmer Remmer, Willie Kyne, and Sylvan Lando.

Q. What interest did each of them have in that operation? A. One-sixth.

Q. You have seven people and you say it was divided into [951] sixths; will you explain that?

A. Carl Nealis and Jess Kopstick had one share, one-sixth.

Q. In the acquisition of that for 16 thousand dollars, you say that money was entirely put up by them? A. Yes, sir.

Q. Did anybody else put up any money in connection with the acquisition of the back room?

A. None for the back room; no, sir.

Q. And for that 16 thousand dollars together they received one-sixth interest? A. Yes, sir.

Q. And the other five people you named each had one-sixth? A. Yes, sir.

Q. Did you put up any money?

(Testimony of William E. Kyne.)

A. No, sir.

Q. How long did Carl Nealis and Jess Kopstick remain interested in that business?

A. I believe they filed for one year.

Q. Was that the year 1943, the first year?

A. Yes, sir.

Q. After that what occurred, so far as their interest was concerned?

A. I think they drew their money out. I believe they drew that money out.

Q. At any rate, were they repaid their [952] money?

A. Yes, sir.

Q. And after the first year—

Mr. Gillen: Just a minute. I wonder if we can get these things settled from the witness, may it please the court, without a suggestion. Mr. Kyne said he believed they drew their money out; counsel suggested they were paid that money back. I think if counsel will ask the witness, the witness will testify what he knows, and if he doesn't know he can say so.

The Court: Try to avoid leading questions, Mr. Campbell.

Mr. Campbell: I will to the best of my ability.

Q. Were you present at the time that Kopstick and Nealis withdrew from the partnership?

A. I don't remember.

Q. Do you recall in what manner or method they obtained their money?

A. I believe I paid them back.

Q. And what was the source of the money which

(Testimony of William E. Kyne.)

you paid them back? A. The club, 186 Club.

Q. Was there a bank account maintained for the 186 Club? A. No, sir.

Q. In what form did you pay them the money? A. Cash.

Q. And you say the source of the cash was the 186 Club? A. Yes, sir. [953]

Q. Where was the cash belonging to the 186 Club kept? A. Box 48.

Q. That is in the Day and Night Branch of the Bank of America? A. Yes, sir.

Q. And will you state whether or not you were acting on any one's instructions when you paid them back? A. No, sir.

Q. Will you relate the circumstances under which you paid them back?

A. They wanted their money back so I gave it to them as promptly as it came in.

Q. And how much did you pay them?

A. Sixteen thousand.

Q. After they left or withdrew from the partnership, what were the interests in the 186 Club?

A. It was equal share.

Q. Well, that left five of you, is that correct?

A. Yes, sir.

Q. Well, prior to the end of 1946 did any of the others withdraw? A. Yes, sir.

Q. Who?

A. I may be mistaken there, Mr. Campbell. I think that Lando and Casselini withdrew, but I am not sure as to the exact year.

(Testimony of William E. Kyne.)

Q. At the time they withdrew, were they paid any money? [954]

A. Not to my knowledge.

Q. Did you pay them any money?

A. No, sir.

Q. Now so far as your interest in the 186 Club was concerned, was any written agreement entered into?

A. I believe we had—I think we had papers concerning a partnership the first year until they changed into a corporation, but I am not sure.

Q. Now will you describe the nature of the operations of the 186 Club?

A. It was a card room, open 24 hours a day.

Q. Was that operation similar to that of the Menlo Club?

A. Same type, yes, sir.

Q. Who were the managers there?

A. Bert Bustrano was manager.

Q. What hours, if any, did he serve as manager?

A. Mostly at night time.

Q. Who served in the day hours?

A. Oh, different floor forces, I don't remember the names,

Q. I am going to show you government's Exhibits 110 to 110F for identification, sheets headed "Poker," and ask you first if you are familiar with such sheets?

A. Yes, sir.

Mr. Avakian: Your Honor, may we raise objection to that question and be permitted— [955]

The Court: No, it is too late. You want it on the regular ground?

(Testimony of William E. Kyne.)

Mr. Avakian: No, as to the form of the question.

The Court: No, it is too late. The question has been answered.

Mr. Avakian: May we move to strike?

The Court: Motion denied because there was no objection made before the answer.

Mr. Avakian: He answered before we could speak, your Honor.

The Court: The ruling will stand.

Mr. Gillen: Will your Honor instruct the witness not to answer quite so fast?

The Court: Yes, do not answer immediately the question is propounded. Give counsel an opportunity to object.

Q. Do you recognize those particular sheets?

A. Yes, sir.

Q. Do you recognize the handwriting thereon?

A. No, sir.

Q. Now in the course of your connection with the 186 Club, were sheets similar to these delivered to you?

A. Yes, sir.

Q. And by whom?

A. They were left in the cage and I used to pick them up every [956] morning.

Q. Now how much of your time was spent on the premises of the 186 Club?

A. About five minutes.

Q. A day? A. Daily.

Q. What did you do there other than pick up these sheets?

(Testimony of William E. Kyne.)

A. Pick up what money there was.

Q. And that was money, you say, that was kept in Box 48? A. Yes, sir.

Q. Where was the money kept on the premises?

A. In the cage.

Q. Cashier's cage? A. Yes.

Q. In connection with your services, did you draw any salary from the 186 Club?

A. At the time I was in the army my wife drew ten dollars a day. That was from the Day-Night, nothing from the 186.

Q. Did you at any time draw a salary?

A. No, sir.

Q. Did you at any time receive any profits from the 186 Club? A. No, sir.

Q. Did you at any time make any investment in the 186 Club? A. No, sir.

Q. So far as the other people whom you say were participating [957] there were concerned, do you know whether or not Mr. Busterno drew a salary?

A. I believe he drew twenty or twenty-five dollars a day, I am not sure.

Q. Do you know whether or not Mr. Lando drew any salary? A. No, he did not.

Q. Do you know whether or not Attilio Casse-nili drew any salary? A. No, sir.

Q. Incidentally, Mr. Cassenili is usually known by some other name? A. Dutch White.

Q. Do you know whether or not he drew any salary? A. No, sir.

(Testimony of William E. Kyne.)

Q. Do you know whether or not any of those individuals drew any profits from the 186 Club?

A. No, I don't.

(Jury and alternate jurors admonished and recess taken at 2:50 for 15 minutes.)

3:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now after you picked up the sheets from the 186 Club, Mr. [958] Kyne, what did you do with them? A. Put them in a box.

Q. On what premises? A. 50 Mason.

Q. That is where you maintained your office?

A. Yes, sir.

Q. And was that also Mr. Remmer's office?

A. Yes, sir.

Q. I believe you stated that you recognized these sheets? A. Yes, sir.

Q. I notice, Mr. Kyne, there are several sheets in each group. I will hand you the top group, appears to be that of December 30, 1944, which is

(Testimony of William E. Kyne.)

marked 110A for identification. Can you explain why there are several sheets as to that day?

A. There would be three shifts.

Q. There are some five sheets there. Occasionally were there more than one sheet used on a shift?

A. Between the markers and employees there might be more than one sheet, yes.

Mr. Campbell: I am going to offer these sheets in evidence as government's Exhibits 110A to F inclusive.

Mr. Gillen: May it please the Court, if I recollect Mr. Kyne's testimony correctly, he couldn't recognize the handwriting on those sheets. I might be in error, but I would like to examine him on voir dire. [959]

Mr. Campbell: I believe that is a correct statement.

Mr. Gillen: If that is correct, he can not identify the sheets. Of course, those sheets were produced by the prosecution and not by the witness. He says he does not recognize the handwriting and at one point in his testimony, if I recall, he stated they appeared similar to sheets used at the 186 Club. That is as near as he comes. We are entitled, of course to the person who made the sheets and who is familiar with them. Mr. Kyne's only connection with the sheets seems to be that he picked them up at one place and deposited them in another place, without any checking or anything of the sort. So I submit, first of all, no proper foundation has been laid from this witness to entitle those sheets

(Testimony of William E. Kyne.)

to be entered into evidence. Of course, in addition, to that, I think at this time I should make the original objection that is made to all of these documents, the grounds of which have been fully stated and restated.

Mr. Campbell: I might say also there was a partial identification by Mr. Lando of these sheets.

Mr. Gillen: Mr. Lando didn't recognize them at all, as I recall.

Mr. Campbell: You may be correct. I don't have the transcript of his testimony.

Mr. Gillen: I think the reason why they did not go into evidence is because Mr. Lando did not recognize them. [960]

Mr. Campbell: May I be permitted to ask a few more questions of this witness before renewing the offer?

The Court: Yes.

Q. Using plaintiff's Exhibit 110A for identification as an example, and particularly referring to the names appearing in the left-hand column, do you recognize those names, Mr. Kyne?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial, may it please the Court, whether he recognizes names or not, that still would not lay the foundation as to the accuracy of the contents of the sheets and still would not furnish us with an opportunity to cross-examine the person familiar with them.

The Court: That may be just one question in an attempt to lay a foundation. Objection overruled.

(Testimony of William E. Kyne.)

Mr. Campbell: Yes, your Honor.

Q. You may answer this yes or no, Mr. Kyne.

A. Will you repeat the question?

(Question read.)

A. Yes.

Q. And will you state at this time whether or not you recognize names appearing there of those who were connected with the business, either as partners or as employees?

A. I recognize four names here.

Q. And what was the nature of the connection of those individuals with the business? [961]

A. So much credit on the house.

Q. Will you state whether or not any of those were employees or partners?

A. Three of them partners, one was an employee.

Q. Mr. Kyne, will you state whether or not it was a regular part of the operation of the 186 Club to make up sheets during the course of each day of operation of the type which you hold in your hand?

A. Yes, sir.

Mr. Gillen: May it be considered my objection goes to all these questions as incompetent, irrelevant and immaterial, and still not laying the proper foundation?

The Court: Your objection to this question will be overruled.

Q. Calling your attention to the other exhibits in the group, that is 110 for identification and 110B

(Testimony of William E. Kyne.)

to F for identification, I will ask you whether or not these are sheets of a similar nature to that which I showed you which was 110A?

A. Yes, sir.

Q. And do you also recognize the names of partners and employees thereon? A. Yes, sir.

Q. Now after you received such sheets, Mr. Kyne, did you examine them?

A. No, sir. [962]

Q. Do you know if any one examined them?

A. No, sir.

Q. Were any entries made in any books of such sheets? A. No, sir.

Mr. Avakian: Was the question if he knew or if any were made?

(Question read.)

Mr. Avakian: May we ask the answer be stricken? There is no foundation as to his knowledge as to whether he knew.

The Court: The answer will stand.

Q. Mr. Kyne, did you at any time see any books or records purporting to be books and records of the 186 Club? A. No, sir.

Q. Now calling your attention again to these sheets, Mr. Kyne, was it a part of your duties to pick up such sheets from the 186 Club and deliver them to the office at 50 Mason Street?

Mr. Gillen: Objected to as asked and answered, leading and suggestive and also incompetent, irrele-

(Testimony of William E. Kyne.)

vant and immaterial because it lays no foundation for the admission of these sheets in evidence.

The Court: Objection overruled. You may answer the question.

A. Yes, sir.

Q. Now did you subsequently, Mr. Kyne, deliver to the agents of the Bureau of Internal Revenue the books containing the [963] Poker sheets?

A. Yes, sir.

Q. And did they contain all of such Poker sheets as were in your possession at that time?

A. Yes, sir.

Q. Do you recall the date of that?

A. No, I do not.

Mr. Campbell: I am going to renew the offer at this time, if the Court please, of Exhibits 110 to 110F, inclusive, in evidence.

Mr. Gillen: May it please the Court, he has done absolutely nothing to lay the foundation in the first place.

Mr. Campbell: I ask counsel state his objection rather than making a statement of that kind.

Mr. Gillen: I am stating my objection and I am not making a speech.

The Court: What is your objection?

Mr. Gillen: My objection is, may it please the Court, counsel has gotten no farther in the matter of laying foundation than initially when he made his offer. Now if I may point out to your Honor, the asking of the question by Mr. Campbell if Mr. Kyne recognized a name, that does not establish the

(Testimony of William E. Kyne.)

truth or authenticity or accuracy of anything about the exhibit, because I may write your Honor a letter and mention another man's name and if your Honor was asked if you recognize [964] the name I mentioned, you might say yes, but that still wouldn't place your Honor in the position of establishing the authenticity of anything written in that letter or anything about it and I think there are other means counsel has of getting those records in. Apparently the agents picked those up from Mr. Kyne. They wouldn't know whether they are the same records picked up by Mr. Kyne, there is a question then whether or not they were authentic records of this particular enterprise. It has been indicated here that their enterprises had the same sheets and whether or not one sheet from one place or another belonged to either place, has not been established by this witness' testimony. He is not in position to recognize the handwriting or whether he actually picked up those records from that particular enterprise. He never checked, simply picked up at one place, delivered to another place, without looking at them or using or in any wise utilizing them in connection with his duties and I submit, your Honor, of course whatever is in the records Mr. Kyne is not in position to answer so any cross-examination wouldn't be evidence on them.

The Court: I think we may sum up the situation this way. It has been shown that records similar to these exhibits were kept in the regular course of business, but so far it can not be said that these rec-

(Testimony of William E. Kyne.)

ords were kept in the regular course of business of this institution. We have gone so far and no farther to [965] show that records similar to this exhibit were kept in the course of business. I will sustain the objection.

Mr. Gillen: May I respectfully call your Honor's attention to Exhibit 114 in evidence, and 114A and 114B. Those exhibits are in the identical position as the exhibits offered here and may I respectfully ask your Honor to reconsider the ruling. Those were admitted with no greater foundation than in this instance. I think, your Honor, if you refer to the record you will see that Mr. Kyne was unable to lay a foundation for the authenticity of those records as he was in this case.

Mr. Campbell: It occurs to me that the objection was entered at great length at the time and passed upon by the Court.

The Court: If you point out to me at any time that a ruling made here was erroneous, I am perfectly willing to vacate that ruling.

Mr. Gillen: Whatever your Honor suggests. I think the record will reflect the positions are identical.

The Court: I think it can be said of these records, 110 to 110F, it has been shown records similar to those were kept in the regular course of business but it has not been shown that these particular records were kept in the regular course of business. If [966] that is the same situation as to 114, 114A and 114B, I will vacate the ruling.

(Testimony of William E. Kyne.)

Mr. Gillen: I think your Honor will find it is identical. If your Honor would rather wait until the transcript is written up tomorrow, we will call it to your Honor's attention at that time.

The Court: Very well.

Q. Referring, Mr. Kyne, to Exhibit 110 for identification, which consists of some nine sheets, I refer first to the first sheet and ask you if you recognize any of the handwriting on that page?

Mr. Gillen: Objected to first of all, already asked and answered; secondly, that it is referring to an exhibit that has already been excluded from evidence by your Honor. The foundation will have to be laid before counsel can use that.

The Court: Objection overruled.

Q. I wish you would go through this exhibit page by page and state whether or not you recognize any of the various handwritings which appear?

A. I wouldn't recognize any handwriting.

Q. Now I call your attention on the first page to the name Kyne and amount set forth opposite. Does that in any way refresh your recollection?

A. Yes, sir.

Mr. Gillen: Just a moment. I don't think counsel should [967] refer to any contents of a document that has been excluded by your Honor. If he can do it with one or two items, he can read the whole matter in and it has been excluded.

The Court: Of course, I wouldn't want to see the contents of the document brought out unless it

(Testimony of William E. Kyne.)

is admitted in evidence, but I think this question is all right. Objection overruled.

Q. Does that refresh your recollection as to whether or not that was a record of the 186 Club?

A. Yes, sir.

Q. And what is your recollection?

A. Regarding this amount?

Q. As to whether or not that is a record of the 186 Club? A. That was my daily record.

Q. And is that true—examine each of these and state whether having examined that item, if that is true of each of the sheets?

A. I believe that is the record.

Mr. Campbell: I will renew the offer.

Mr. Gillen: Now I ask permission to examine this witness on his voir dire in connection therewith.

The Court: Yes.

Q. (By Mr. Gillen): Mr. Kyne, counsel showed you Exhibit 110 for identification and he asked you to look at page 1 of the sheet of pages in that exhibit, and asked you to look particularly at the name Kyne and asked you if that refreshed your [968] recollection as to whether or not that was the record of the 186 Club. Let me ask you now, Mr. Kyne, does the fact that your name appears on one sheet refresh your recollection that was an original accurate and authentic record of the 186 Club?

A. The amount refreshes my memory.

Q. The amount refreshes your memory that everything else in that record was a record of the club? A. That I wouldn't know.

(Testimony of William E. Kyne.)

Q. The name Kyne and the amount refreshes your recollection as to some transaction with the 186 Club, is that correct? A. Yes.

Q. Can you tell us whether you are refreshed mentally as to the other pages as to all the other various names, as to the authenticity and original records of the 186 Club?

A. That I wouldn't know.

Mr. Campbell: That is not proper voir dire. It might be proper cross-examination.

The Court: He may answer the question.

(Question read.)

A. That I wouldn't know about. They are the parties mentioned on the sheet.

Mr. Gillen: I might advise your Honor, if your Honor cares to look at them, there are numerous names on these various sheets and Mr. Kyne look at 110 and tell us whether there is anything else on any of those sheets that you know anything [969] about or recall anything about? A. No, sir.

Q. Other than the item referring to you. Now, Mr. Kyne, I am going to hand you the balance of these exhibits and ask you if you will run through the balance of the exhibits and tell us if that is your position and condition of mind as to all the other exhibits there, A to F?

A. The only account I can swear to would be my own account.

Q. In other words, is it true that on each of those exhibits the name of Kyne appears with something

(Testimony of William E. Kyne.)

that refreshes your recollection as to a personal transaction of yours? A. Yes, sir.

Q. And you know nothing about anything else on those sheets? A. No, sir.

Mr. Gillen: May it please the Court, the foundation has not been laid.

Mr. Campbell: May I ask the witness a further question?

The Court: You may do so.

Q. (By Mr. Campbell): When you say that is the only thing you can swear to on there, are you referring to the accuracy of the information or not?

A. The only amount I can swear to is the amount made to me.

Q. You did not make the entries yourself, is that correct? A. No, sir.

Q. The question I asked you, after having seen that information, [970] if you can state that these were records made in the conduct of the 186 business?

Mr. Gillen: Just a moment, may it please the Court. He has already answered a number of times they were similar to records kept.

The Court: No, he answered just before the voir dire that those were the records.

(Record read.)

The Court: Objection overruled. Admitted in evidence.

Mr. Gillen: May I respectfully state, as the record stands, he has answered both ways. He says he

(Testimony of William E. Kyne.)

knows nothing other than the matter of his own transactions.

The Court: Objection overruled. There are other matters the Court takes into consideration in addition to that answer.

Mr. Gillen: May I ask a question on voir dire?

The Court: I will withdraw the ruling. You may do so.

Q. (By Mr. Gillen): I hand you, Mr. Kyne, prosecution's exhibits 110 to 110F inclusive, and I will ask you to look at those and tell us whether or not you know, of your own knowledge, if those are actually the records of the 186 Club, if those are the records at the time turned over to the Internal Revenue agent, or who kept them or whether they are accurate or not or whether you know anything about them other than appears under an item referring to you? [971]

Mr. Campbell: Objected to on the ground it is a compound question, contains five or six elements.

The Court: Objection sustained.

Mr. Gillen: I can break it down. I was trying to save a little time.

Q. Do you know of your own knowledge that those were the actual records, the exhibits which you hold on your knee now, prosecution's exhibits 110 to 110F, inclusive?

Mr. Campbell: Objected to as having been asked and answered.

The Court: You may answer the question.

(Testimony of William E. Kyne.)

A. I can only swear to the one amount that is owed to me.

Q. My question is, do you know whether or not those documents which you hold on your knee are the actual authentic, original records kept by the 186 Club?

Mr. Campbell: I object to the question in that form because it includes descriptive matter as to authentic. They were actual records, but of course he did not make the entries and can't say.

The Court: Do you recognize those as the documents which you picked up from the cage?

A. No, I don't, aside from the one amount owed to me.

Q. In other words, your testimony is that there is one item reflected on those exhibits that you are familiar with, had something to do with? [972]

A. That is correct.

Q. You don't recognize the handwriting?

A. No.

Q. You don't know whether you ever picked up those actual documents which you have there on your knee from the 186 Club and dropped them at 50 Mason Street?

A. No, sir.

Q. And you don't know whether those are part of the documents you turned over to the Internal Revenue Department?

A. No, sir.

Mr. Gillen: We stipulate, your Honor, the foundation has not been laid.

The Court: The exhibit will not be admitted in evidence. Objection sustained.

(Testimony of William E. Kyne.)

Q. (By Mr. Campbell): Now you stated, Mr. Kyne, that as you were examining this particular document, you saw there an item relating to you?

A. Yes, sir.

Q. And you stated, I believe, that that was an accurate item? A. Yes, sir.

Q. Now what was the nature of the business which you had with the 186 Club which gave rise to that item? A. I had a credit there—

Mr. Gillen: Pardon me—objected to as incompetent, irrelevant and immaterial. [973]

The Court: I assume counsel is trying to lay the foundation.

Mr. Gillen: I will withdraw the objection.

A. I had a credit with the 186 Club of fifteen thousand dollars.

Q. And that is the item that you refer to on the sheets which were shown to you? A. Yes, sir.

Q. And for the purpose of refreshing your recollection, I call your attention to Exhibit 110B for identification, is that the amount which is owed for which you have a credit on December 31, 1944?

A. I don't remember the dates.

Q. Does examination of 110B for identification refresh your recollection in that regard?

A. That is noted there.

Mr. Avakian: That may be answered yes or no, your Honor.

The Court: Answer yes or no.

A. Yes.

Q. What is your present recollection as to the

(Testimony of William E. Kyne.)

amount of credit that the 186 Club owed you as of December 31, 1944?

Mr. Avakian: Objected to on the ground counsel is not laying the foundation but is trying to get into evidence contents of a document which has been excluded from evidence.

Mr. Campbell: I am asking for his own personal recollection. [974]

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial as to this case, which involves income tax of Elmer Remmer.

Mr. Campbell: This is a preliminary question.

The Court: You may answer the question.

A. I had that much credit in 1944.

Q. I will ask you, Mr. Kyne, if that credit to you at the end of 1944 was a personal credit?

A. No, sir.

Q. Will you state whether or not that was a credit belonging to some one else?

A. It was money belonging to the partners in the the 186 Club.

Q. And by partners you are referring to the various people whose names you gave as being interested in the partnership as of that date?

A. Yes, sir.

Q. Will you state whether or not the credit being in your name was as a representative of all the partners?

A. Yes, sir.

Q. Now will you state the manner in which that credit in your name arose, so far as the conduct of the business was concerned?

(Testimony of William E. Kyne.)

A. It was a fill-in for markers.

Q. Will you state whether or not that 16 thousand dollars represented monies withdrawn by the partners?

Mr. Gillen: Objected to as leading and suggestive. I [975] think counsel can ask him what he means.

The Court: Objection sustained.

Q. Very well. What do you mean by fill-in for markers?

A. You are supposed to have some cash in a place to operate and if it is all markers, someone has to go and get a new bank roll until the markers are paid.

Q. Yes; and what did the 15 thousand dollars credit represent? Did that repay the money?

A. That represented the partner's money, yes.

Q. And that 15 thousand dollars that was credited to you, was that in regard to cash deposit there? A. Yes, sir.

Q. And who, if anyone, supplied you with the 15 thousand dollars cash to fill in for the markers?

A. It was money I had collected from the Club.

Q. Previous to the time that you put it up?

A. Yes, sir.

Q. And where had you kept that 15 thousand dollars previous to the time that you put it up with the club as a fill-in for the markers?

A. The sheets will show. I paid it in a little at a time.

Q. And whose markers were involved?

(Testimony of William E. Kyne.)

A. There are about 20 names on this sheet here.

Q. Well, do you recognize those names?

A. No, sir. [976]

Q. With regard to the markers they were fill-in for and you put up this money, where were those markers held?

A. The cage, 186 Club.

Q. Did you, yourself, at any time examine those markers?

A. No, sir.

Q. Now taking the year 1944, will you state, if you know, whose duty it was to make up the daily Poker sheets?

Mr. Gillen: Objected to as asked and answered. He said it was made up by each shift of cashiers.

Mr. Campbell: I am trying to ascertain who they were.

The Court: You may answer the question.

A. I don't remember their names.

Q. Do you remember the names of any single one of them?

A. No, I don't. There were quite a few of them.

Q. Mr. Kyne, do you know whether or not any pay roll record was kept of the employees of the 186 Club?

A. Yes, sir. The social security will show that.

Q. Who maintained that record?

A. I believe Mr. Slater kept that record.

Q. Can you state under whose supervision the daily Poker sheets were made up?

A. Bert Busterno was the manager of the club.

Q. Incidentally, what were Mr. Cassilini's duties there?

(Testimony of William E. Kyne.)

A. Attilio Cassilini had quite a following among the sporting people and he used to play cards there at night time and bring [977] his friends there.

Q. Those were the duties he had?

A. Yes, sir, and cashing checks and OKing.

Q. And I believe you said Billy Silva was the day manager? A. I did not.

Q. Who was day manager?

A. I was talking about Joe Silva at the Menlo Club.

Q. Who was on days at the 186 Club?

A. There wasn't much play in the day time. Any one might be in charge there, any one of these sheets.

Q. Do you have any recollection in that regard?

A. Joe Chilli was or any one of these employees could be on the floor.

Q. Any one of these employees, to what are you referring? A. This sheet here.

Q. Referring to plaintiff's Exhibit 110 for identification.

A. Young fellow Gene was, or any one on the sheet.

Q. You refer to the second page, government's 110 for identification, to the column at the upper left-hand corner, is that correct? A. Yes, sir.

Q. State whether or not you recognize the list of names there, or any of them, as being employees of the 186 Club?

Mr. Gillen: Objected to as asked and answered several times. [978]

(Testimony of William E. Kyne.)

The Court: You may answer the question.

A. Well, these are just first names—Abe, Roy, Eddie, Murphy, Louie, Joe, Pete, Al, Phillips, Gene.

Q. Do you recognize those as employees?

A. I recognize Gene and Eddie.

Q. Now you stated, I believe, that there was in the front of the 186 Club a business known as the Day-Night Cigar Store, is that correct?

A. Yes, sir.

Q. Now will you state whether or not you had an interest in that operation as a partner or otherwise?

A. Yes, sir, I had one-third.

Q. And when did you acquire that?

A. The day we opened up.

Q. Now did you invest any money for that one-third interest?

A. No, sir.

Q. From whom did you receive the one-third interest?

A. Remmer put up about six thousand dollars, I believe, for it.

Q. From whom was that business purchased?

A. Max Silverman.

Q. And what was the nature of that business?

A. Cigars, magazines, liquor.

Q. Will you state whether or not there were any other sources of income to that business?

A. Pin ball machine, two of them. [979]

Q. And will you state whether or not any dice games were operated in connection with that business?

A. No, sir.

(Testimony of William E. Kyne.)

Q. Such as 26? A. No, sir.

Q. Did you at any time receive a salary from that business? A. Yes, sir.

Q. Over what period and in what amounts?

A. My wife received ten dollars a day out of the business when I was in the service and when I came out I received \$12.50 a day out of the business.

Q. Did you perform any services in connection with that business?

A. No, sir. Slater had charge of the books.

Q. Did you perform any other services?

A. I hired the clerks.

Q. Aside from hiring the clerks, did you perform any services? A. No, sir.

Q. And aside from ten dollars a day, which was paid to your wife while you were in the service, and \$12.50 a day that you received after you returned, did you receive any other amounts from the Day-Night Cigar Store by way of profits or distribution of capital?

Mr. Avakian: Objected to as incompetent, irrelevant and [980] immaterial. The same question counsel keeps repeating. The profits of the partner are immaterial.

The Court: We have heard that before two or three times.

Mr. Avakian: It is a perfectly good objection. I would like to have the Court consider it.

The Court: The Court will overrule the objection.

(Testimony of William E. Kyne.)

(Question read.)

A. No, sir.

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [981]

Tuesday—December 18, 1951

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

The Court: Yesterday, just near the end of the session, there was some discussion about the foundation, concerning 110 series and 114 series, of exhibits. At that time I vacated the order admitting 114A, etc., for the reason that it appeared from the discussion here that the same situation existed as to 114 as was found to exist as to 110, but I think the matter should remain as it was before that discussion until we have an opportunity to examine the record in regard to the 114 series, and the order vacating and setting aside the admission of that series 114 is vacated and they are restored as exhibits, with the right, if counsel desires, to move for a reconsideration or to hear argument on the

(Testimony of William E. Kyne.)

question of foundation later. For the present that order will stand and they will stand as they were before they were stricken from the record.

Mr. Gillen: Let me understand your Honor. Yesterday we were concerned with 110 to 110F and as I recall the record, [982] your Honor did not admit those in evidence.

The Court: No, without any prejudice to showing additional matters of foundation.

Mr. Gillen: Now then we called your Honor's attention to a similar situation as existed as to 114, 114A and 114B.

The Court: And on that suggestion, I vacated the order which had been made earlier, admitting those exhibits.

Mr. Gillen: I didn't understand your Honor had admitted them.

Mr. Campbell: I think the matter was held in abeyance until we saw the record.

Mr. Gillen: I have that here if your Honor would care to see it.

The Court: For the time being the matter will stand as it is.

Mr. Gillen: As I understand, nothing more will be done with those exhibits until your Honor has an opportunity to look at the record.

The Court: Yes. Of course, any time counsel wishes to present argument on the matter, I will be glad to hear it, but the way the record is, 114 series remains in the record as exhibits admitted in evidence.

(Testimony of William E. Kyne.)

Mr. Gillen: But as I understand, they can not be referred to until your Honor has passed on that further. [983]

The Court: No, just leave them the way they are.

Mr. Gillen: Of course, you see what would happen. Counsel could go to work and get what they wanted out of them and our argument at a later time would be futile. We have the record, it is very short, at page 921 to 929.

Mr. Campbell: We would want to be heard on that matter as well.

The Court: We will let the matter stand the way it is at present.

Q. Mr. Kyne, referring back to plaintiff's Exhibit 115, check dated November 7, 1946, in amount of 65 thousand dollars, signed by you and which you testified you cashed and turned the proceeds over to Mr. Remmer, do you recall that?

A. Yes, sir.

Q. Showing you the exhibit. Now will you state whether or not, if you know, that 65 thousand dollars was returned to Mr. Remmer prior to the end of 1946?

A. No, it wasn't. Returned to the Menlo.

Q. Yes, and your answer is no, it wasn't?

A. No, sir.

Q. Now at the conclusion of court yesterday we were going into the matter of the Day-Night Cigar Store. Now will you state again what your interest was in that operation, Mr. Kyne?

(Testimony of William E. Kyne.)

A. One-third.

Q. And the owners of the other [984] two-thirds? A. Remmer and Lando.

Q. And I believe you stated that you had invested no money, is that correct?

A. That is correct.

Q. What was the purchase price for above portion of the business?

A. \$5500 or six thousand.

Q. And will you state what, if anything, was received in return for that \$5000 or six thousand dollars.

A. There was a liquor license and inventory.

Q. Do you recall the amount of the inventory?

A. No, I don't.

Q. Now were books and records set up, so far as the Day-Night Cigar Store was concerned?

A. Yes, sir.

Mr. Campbell: If the Court will indulge me, I desire to withdraw some of the records here.

The Court: You may.

Mr. Golden: To save time, your Honor, while Mr. Weaver is going through the records, may we object to the use or offer of the contents on the same grounds?

The Court: The record may show that objection and the same ruling of the court. Objection is overruled.

Mr. Golden: That objection includes a motion to suppress on the same grounds.

The Court: It may be so understood. [985]

(Testimony of William E. Kyne.)

Q. Mr. Kyne, who put up the money for the acquisition of the inventory and the license?

A. Mr. Remmer.

Mr. Campbell: May this be marked for identification 117 for identification. I ask to have this volume marked 117A for identification, cash receipts and disbursements, and as Exhibit 117B for identification, volume headed "Cafe and Restaurant Business and Tax Record." These are all Day-Night Cigar Store. Containing pay roll, income and expenses.

Q. Now, Mr. Kyne, I show you plaintiff's Exhibit 117 for identification, a bound accounting volume with the words "Day-Night Cigar Store" appearing on the front, and ask you if you recognize that volume? A. No, I don't.

Q. Do you recognize the handwriting in the volume? A. It looks like Slater's writing.

Q. Who was Mr. Slater?

A. He was the bookkeeper.

Q. I show you plaintiff's Exhibit 117A for identification. On its first page appears notation "Day-Night Cigar Store, W. E. Kyne, Commencing March 1, 1943," and ask you if you recognize that volume?

A. These books were kept up in his office. I do not recognize the volume. It looks like his handwriting.

Q. Is your testimony the same as to government's Exhibit 117? [986] A. Yes, sir.

(Testimony of William E. Kyne.)

Q. I show you government's Exhibit 117B and ask you if you recognize it?

A. This looks like a book that Maundrell kept, 50 Mason.

Q. And are all of these books, if you know, with relation to the Day-Night Cigar Store?

Mr. Gillen: Objected as calling for conclusion. He says he doesn't recognize them.

The Court: I will sustain the objection.

Mr. Campbell: If the Court please, I am going to offer these in evidence, they having been produced pursuant to subpoena to produce books and records of the Day-Night Cigar Store, as enumerated therein.

Mr. Gillen: May it please the Court, we object to the offer of the 117 series in evidence. Mr. Campbell's statement is not correct. They were not produced in response to a subpoena, as your Honor is well aware, and your Honor is also familiar with our objection along those lines. We have the same objection as yesterday to the 110 series, no foundation laid, no opportunity to cross-examine the person who prepared the books to determine the accuracy of the contents of the books, and Mr. Kyne says that the books look familiar but he does not recognize them and he does not know them to be the books of the establishment in question.

Mr. Campbell: These are a portion of the records called [987] for in the subpoena issued by the government.

Mr. Golden: That does not authenticate them.

(Testimony of William E. Kyne.)

The Court: Well——

Mr. Campbell: Which have been produced here by the defense.

The Court: We have your statement for that and disputed by counsel. We have no evidence in the record to that effect.

Mr. Campbell: The subpoena is in the record, if the Court please. The subpoena was read in the record and the Court subsequently made its order with respect——

The Court: Does the record show that these were books produced pursuant to that subpoena?

Mr. Campbell: These books were produced here in the courtroom as books that had been placed in the possession of the clerk, if the Court please. I extracted them at this time from the records in the clerk's possession.

Mr. Golden: We renew our offer to take evidence on these books and your Honor will recall the question the other day and I won't go into it at length until permitted to, but we offered to produce evidence showing the conditions surrounding the circumstances of these books and records. Now as your Honor well says, there is no evidence at this time.

The Court: If the books and these other records, 110, were brought into court here pursuant to the order [988] the Court made sometime ago, then they will be admitted in evidence.

Mr. Golden: That doesn't authenticate them. They still have no foundation.

(Testimony of William E. Kyne.)

The Court: The only question I have in regard to them is whether or not the foundation was laid sufficiently in accordance with the terms of Section 1732. (Reads section.) If that is a record that was kept——

Mr. Golden: There is no showing as to how these were made, as the section says, "in the regular course of the business at the time of transactions or within a reasonable time thereafter." There is no foundation.

The Court: The point which was bothering me yesterday, was whether or not the record was one which was kept by the particular establishment——

Mr. Golden: I think if your Honor will have read the answers of the witness since Mr. Campbell offered these books, you will find nothing to indicate, outside of Mr. Campbell's statement, that these are books——

The Court: Are these among the records which were brought into court pursuant to the Court's order?

Mr. Golden: Yes.

The Court: Required the defendant to produce?

Mr. Golden: That's right.

The Court: Then that, it would seem to me, would meet [989] the situation. They will be admitted in evidence, 117, 117A, and 117B. Now does the same situation apply to 114?

Mr. Campbell: No, your Honor, those are in a different category. The 110 and 114 series are in a different category.

(Testimony of William E. Kyne.)

The Court: Very well. 117 is admitted.

Mr. Golden: But your Honor says that the holding is that anything the government calls for is ipso facto authentic?

The Court: No, I don't go that far. I take the fact that they were produced by the defendant, pursuant to order, taking that with the testimony I heard from the witness.

Mr. Golden: Suppose, your Honor——

The Court (Interceding): They are going to stand admitted 117, 117A and 117B.

Mr. Campbell: I will ask to have marked for identification as government's Exhibit 118, a folder containing various documents, the folder bearing the writing, "Inventories."

Mr. Golden: Your Honor, may I suggest, to avoid the necessity of interruptions, that the basic objection and motion to suppress——

The Court: It might be well if you just say the same objection.

Mr. Golden: Yes, I am willing to do that, provided the record will be clear in what is meant.

The Court: Well, you can make it clear as we go along. [990]

Mr. Golden: I hope so.

Mr. Campbell: I think it will be agreed that this folder document was withdrawn from those deposited with the clerk by counsel, is that correct?

Mr. Golden: We will if you say so.

Mr. Gillen: We won't go that far.

Mr. Campbell: May this be marked 112A for

(Testimony of William E. Kyne.)

identification. 112 is in evidence, consists of ledgers of 110 Eddy Street. It is book headed "Cafe and Restaurant Business Tax Record 110 Eddy Street." Now will it be agreed 118 for identification is a portion of the documents delivered to the clerk pursuant to the Court's order?

Mr. Golden: Your Honor, I feel we can not agree to that, for this reason—your Honor is apparently—

The Court (Interceding): If you just don't agree, that is all that is necessary.

Mr. Campbell: Well, I am placed in this position, if the Court please. We took these out of the box this morning and I—

The Court (Interceding): There is nothing the Court can do about it counsel won't agree.

Mr. Golden: If your Honor will hear me, I would be very glad to be heard on it.

The Court: All right.

Mr. Campbell: That will be outside the presence of the jury. [991]

The Court: Very well, we will have to excuse the jury.

(Jury and alternate jurors admonished and excused at 10:30.)

(Argument in the absence of the jury. N.B. 325, p. 49 to p. 56.)

10:45 A.M.

(Defendant present in court.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Campbell: At this time I wish to renew my offer in evidence of the 117 series.

The Court: Exhibits 117, 117A and 117B are admitted in evidence.

Mr. Campbell: Now in regard to 118 for identification, would it be agreed that this folder of papers was withdrawn from those delivered to the clerk?

Mr. Golden: We will agree, your Honor, that Mr. Campbell got it out of the box that was deposited with the clerk, but we can not agree as to what this is, because we do not know what evidence it is.

The Court: It was deposited with the clerk by whom?

Mr. Golden: By us.

The Court: Pursuant to that order?

Mr. Golden: Which we consider to be an illegal and [992] unconstitutional order.

The Court: Very well. It is admitted in evidence.

Mr. Golden: He hasn't even attempted to lay a foundation what it is.

(Testimony of William E. Kyne.)

The Court: I will withdraw that.

Mr. Campbell: It has been stated, however, that this has been withdrawn from the records deposited with the clerk.

The Court: I understand.

Q. Mr. Kyne, I am going to show you government's Exhibit 118 for identification, which purports to contain various documents, is headed "Inventory" and names of various enterprises, and ask you to examine this. Do you know what record is? A. Yes, sir.

Q. Will you state whether or not, Mr. Kyne, based upon your participation and activity in various businesses which you have described, if it was customary and part of the business to take inventories? A. Yes, sir.

Mr. Gillen: Just a moment—

Mr. Campbell: Just a moment, I am asking him if it was the custom, and may I finish my question.

The Court: The question goes out.

(Question read.)

Q. (Continuing): —from time to time of the merchandise on hand?

Mr. Gillen: Objected to as incompetent, irrelevant and [993] immaterial, whether it was customary to do anything. That does not establish whether this exhibit counsel holds in his hand, plaintiff's 118 for identification—or actually what might have been the custom in the various businesses can not in any way lay the foundation.

(Testimony of William E. Kyne.)

The Court: Objection is overruled. Answer the question.

A. It was customary to take inventory for sales tax reports, floor tax.

Q. And when you refer to floor tax, to what particular type of merchandise do you refer?

A. Whiskey.

Q. That is alcoholic beverages?

A. Yes, sir.

Q. And did you, yourself, participate in taking inventories? A. No, sir.

Q. Who did take the inventories?

A. The bookkeeper.

Q. Now during the year 1944 who took the inventories of the Day-Night Cigar Store?

A. Slater.

Q. Of the 110 Eddy? A. Slater.

Q. Of the 186 Club?

A. That was a card room.

Q. Was any inventory taken there? [994]

A. No, sir.

Q. During 1945 who took the inventories of those establishments? A. That I don't know.

Q. During 1946 who took the inventories?

A. That I don't know.

Q. Now calling your attention again to plaintiff's Exhibit 118 for identification, do you recognize any of the various handwritings which appear therein? A. Most of this is printed.

Q. Do you recognize the printing?

(Testimony of William E. Kyne.)

A. No, I don't.

Q. Do you recognize the handwriting of that which is handwriting? A. No, I don't.

Q. Mr. Kyne, I am going to show you government's Exhibit 80, being partnership return of income for the year 1943 for the 110 Eddy Street, and ask you if that is your signature thereon?

A. Yes, sir.

Q. I call your attention to the face of that document and the figure given "Inventory at the end of year \$22,510," do you observe that?

A. Yes, sir.

Q. Who, if any one, supplied you with that figure? A. Bob Slater. [995]

Q. I call your attention to government's exhibit—

Mr. Gillen: I move the answer be stricken so I may offer an objection that that would be hearsay.

The Court: I will consider the objection has been made and overruled.

Q. I call your attention to plaintiff's Exhibit 81, partnership return of income, 110 Eddy Street, for the year 1944, and ask you if that is your signature thereon? A. Yes, sir.

Q. I call your attention to the figure on the face of the return of "Inventory at end of year \$28,131.45," and ask you who, if any one, provided you with that figure? A. Slater.

Mr. Gillen: Same objection, may it please the Court.

(Testimony of William E. Kyne.)

The Court: It may be understood that you made the same objection and same ruling.

Q. I call your attention to plaintiff's Exhibit 84, partnership return of income of 1944 of the Day-Night Cigar Store, and ask you if that is your signature thereon? A. Yes, sir.

Q. I call your attention to the figure on the face of the return, "Inventory at end of year \$24,-747.27," and ask you who, if any one, provided you with that figure? A. Slater.

Mr. Gillen: Same objection. [996]

The Court: Same ruling. You may answer the question.

A. I answered the question. Slater.

The Court: Pause a moment before you answer so counsel may have an opportunity to make an objection.

Q. I show you government's Exhibit 86, partnership return of income Day-Night Cigar Store for the year 1946, and ask you if that is your signature?

A. Yes, sir.

Q. I call your attention to the figure appearing on the face of the return, "Inventory at end of year, \$22,466.44," and ask you who, if any one, provided you with that figure?

A. I don't know who took the inventory that year.

Q. Do you recall the capacity of the person taking the inventory?

Mr. Gillen: Objected to as calling for opinion

(Testimony of William E. Kyne.)

and conclusion and hearsay and speculation on his part. He said he didn't know.

The Court: Objection sustained. Can you re-frame that question?

Q. Was that figure of \$22,466.44 given to you by some one? A. Yes, sir.

Q. And do you at this time recall who gave it to you? A. No, I don't.

Q. I believe you stated you did not personally take the inventory? [997] A. Yes, sir

Q. Now with regard to these returns which you signed and which I have shown you, do you have any reason to doubt the accuracy of the inventory taken and provided to you in those returns?

Mr. Gillen: Well, that is objected to——

The Court: Objection sustained.

Mr. Campbell: At this time I will offer in evidence plaintiff's Exhibit 118 for identification.

Mr. Gillen: To which we offer the objection, may it please the court, no foundation has been laid.

The Court: Objection sustained.

Mr. Campbell: May I be heard later on that?

The Court: Yes, without prejudice to allow any further attempt to lay a foundation, if you desire to make it.

Q. Now, Mr. Kyne, as I recall your testimony yesterday, you stated that, with reference to the Day-Night Cigar Store, a daily amount was paid to your wife from that business while you were in the service? A. Yes, sir.

(Testimony of William E. Kyne.)

Q. From February, 1945, until approximately June of 1946, is that correct? A. Yes, sir.

Q. And that after you returned from the service you received a daily amount, I believe of \$12.50 per day? [998] A. Yes.

Q. Now I believe also you stated that aside from those sums, you never received any monies from the Day-Night Cigar Store? A. Yes, sir.

Q. Now will you state, Mr. Kyne, whether or not, for the year 1943, you returned all of the profit of the Day-Night Cigar Store as your individual profit in your income tax return?

A. I do not remember.

Mr. Campbell: I will ask to have marked for identification what purports to be a 1943 individual return of Wm. E. Kyne and 1943 amended return of Wm. E. Kyne, as one number.

The Clerk: 119.

(Jury and alternate jurors admonished and short recess taken at 11:05.)

11:15 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now I will ask you, Mr. Kyne, if for the calendar year 1943 you have reported operation known as the Day-Night Cigar Store as your individual business, and you stated that you did not recall.

Mr. Gillen: I am going to offer the objection, may it please the Court, that Mr. Kyne's individual tax return for the [999] year 1943 is incompetent, irrelevant and immaterial. This is a year prior to the starting point named in the indictment, to wit, 1944. We are concerned in this indictment with the individual tax of the defendant Remmer for 1944, 1945 and 1946. Mr. Kyne's return for the year 1943 would not be binding upon us, would be entirely incompetent, irrelevant and immaterial as to the issues of this case.

The Court: Objection overruled. Answer the question.

Mr. Campbell: I had not quite finished my question, if the Court please.

Q. At this time I show you government's Exhi-

(Testimony of William E. Kyne.)

bit 119 for identification and ask you if that refreshes your recollection?

Mr. Gillen: We offer the objection it is an attempt to impeach his own witness.

The Court: Objection overruled.

A. That is my signature.

Q. Is the document which I have shown you the return which you filed, Mr. Kyne?

A. Yes, sir.

Q. Now does that refresh your recollection that you did report the operation of the Day-Night Cigar Store for the calendar year 1943 as your individual operation?

Mr. Gillen: Objected to as impeaching his own witness. The witness has previously testified and exhibits were produced here to show that the Day-Night Cigar Store was a partnership. [1000]

The Court: Objection overruled. You may answer the question.

A. That may have been filed for this amount, but I don't remember if that is the amount of the whole operation.

Mr. Campbell: I am going to offer this in evidence as government's Exhibit 119.

Mr. Gillen: To which we offer an objection, may it please the Court, as incompetent, irrelevant and immaterial. It is impeaching other exhibits that have been offered by the government heretofore, and third, it is an attempt to impeach his own witness. Your Honor will recall that the government offered exhibits to show that this Day-Night Cigar Store

(Testimony of William E. Kyne.)

was a partnership and introduced the testimony of other witnesses to that effect. Now they can't blow hot and blow cold. They are bound by the evidence which they introduced themselves.

Mr. Campbell: Yes, your Honor, but we are now showing how it was reported to the government.

The Court: Objection overruled. The exhibit may be admitted, No. 119.

Mr. Campbell: I will read from this document, Exhibit 119. (Reads.) After deduction of expenses which are enumerated, including wages and depreciation and other expenses, a net profit of \$8505.80.

Q. Now, Mr. Kyne, I believe you testified, have you not, that during the year 1943 the Day-Night Cigar Store was in fact [1001] a partnership, is that correct?

Mr. Gillen: Objected to as repetition and asked and answered. Counsel repeatedly asked the same question. I have a score here of one instance five times. We will be here until the rest of next year if counsel——

The Court: I will sustain the objection.

Q. Did you at that time, or any time, receive any of the profit shown on that statement?

A. No.

Mr. Gillen: Objected to as asked and answered three times and outside of ten dollars given to his wife while he was in the army and \$12.50 given to him when he returned, he received nothing from the Day-Night Cigar Store.

Mr. Campbell: I will withdraw the question.

(Testimony of William E. Kyne.)

Mr. Gillen: When I said "nothing," I should have said nothing by way of cash. It will be shown there was an equity in the business being built up.

Mr. Campbell: I didn't get that last statement.

The Court: It is not necessary. Proceed.

Q. Now, Mr. Kyne, with relation to the purchase of the 186 Club and the Day-Night Cigar Store, what, if anything, was received by way of physical assets for the 16 thousand dollars paid for the back room which you have described?

A. Thirteen card tables and chairs.

Q. Was anything else obtained? [1002]

A. Nothing.

Q. By way of equipment?

A. Some decks of cards and things like that.

Q. Chips, I presume? A. Chips.

Q. Do you at this time recall the value which was placed, or any separate value placed, upon that merchandise or equipment?

Mr. Gillen: Objected to as calling for opinion and conclusion. Your Honor will recall that Mr. Silverman testified, said he placed some valuation and couldn't break it down how he placed the valuation on the property he sold.

Mr. Campbell: I am asking if the purchaser can place any value on it.

The Court: You may answer the question.

(Question read.)

A. I don't know.

Q. Now, Mr. Kyne, were you familiar with an

(Testimony of William E. Kyne.)

operation known as the Transit Smoke Shop?

A. Yes, sir.

Q. And did you have any interest in that enterprise? A. One-fourth.

Q. And do you recall when that was acquired?

A. I believe November '46.

Q. In that connection, did you handle the negotiations? A. No, sir. [1003]

Q. Who did handle the negotiations?

A. Gordon Partee.

Q. Prior to the operation of the Transit Smoke Shop had Gordon Partee been associated with you in any enterprise? A. No, sir.

Q. I am going to show you plaintiff's Exhibit 98, purporting to be agreement between Gordon Partee as party of the first part, and Elmer F. Remmer and William E. Kyne as parties of the second part, and ask you if you are familiar with that agreement? A. Yes, sir.

Q. Is that your signature thereon?

A. Yes, sir.

Q. Do you recognize the signature of Elmer Remmer? A. Yes, sir.

Q. And is that the signature of Elmer Remmer?

A. Yes, sir.

Q. Now I call your attention, Mr. Kyne, to the fact that this agreement recites that the parties of the second part have contributed the sum of \$32,011.01. Did you, yourself, contribute any of that money? A. No, sir.

Q. Who did supply the 32 thousand dollars?

(Testimony of William E. Kyne.)

A. Mr. Remmer.

Q. Did you, yourself, handle the paying out of that money? [1004]

A. Yes, sir.

Q. And to whom did you pay it?

A. Gordon Partee.

Q. Was that full amount paid to him?

A. Yes, sir.

Q. And were any additional amounts paid to him at that time, or to any one?

A. No, sir, 32 thousand was the whole.

Q. \$32,011.01? A. Yes, sir.

Q. State whether or not Mr. Remmer handed you the money to pay him?

Mr. Gillen: Objected to as leading and suggestive, may it please the Court.

Mr. Campbell: Very well, I will withdraw it.

Q. Where did you get the money, \$32,000?

A. I believe I got it out of Box 48.

Q. At the Bank of America, Day and Night Branch?

A. Yes, sir.

Q. And in what form was the money?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial.

The Court: I don't see the materiality. Objection will be sustained.

Mr. Campbell: I am going to have a check on the Bank of [1005] America Day and Night office marked as Exhibit 120 for identification.

Q. Mr. Kyne, I am going to show you government's Exhibit 120 for identification and ask you if that is your signature?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. And will you state upon what bank account that check was drawn? A. Bank of America.

Q. And what particular account there?

A. The Menlo Club.

Q. That is the same bank account which you described in your testimony yesterday?

A. Yes, sir.

Q. And I call your attention to the reverse side and ask you if that is your signature as endorser?

A. Yes, sir.

Q. I call your attention to the words appearing on the front of the check, "Loan for Transit," is that in your handwriting? A. Yes, sir.

Q. Mr. Kyne, was this check used in connection with the purchase of the Transit Smoke Shop?

A. Yes, sir. Paid back to Remmer.

Q. After you drew this check, did you cash it?

A. Yes, sir.

Q. And obtained the cash thereon?

A. Yes, sir. [1006]

Q. And what did you do with the cash?

A. I used——

Mr. Gillen: This is only a document marked for identification. We believe he should not go into the contents. We do not care in this particular instance—we have no objection to its going into evidence.

The Court: The exhibit will be admitted in evidence.

Q. What did you do with the cash obtained?

A. I used it in any activity that came up; for instance, the pool for the B & R Smoke Shoppe.

(Testimony of William E Kyne.)

Q. Did you use any of this money for your personal benefit?

Mr. Gillen: Objected to as calling for opinion and conclusion, whether he used it for his personal benefit. Calls for self-serving statement.

The Court: Objection overruled.

Mr. Gillen: My thought was he could say what he used it for and it would be up to the jury to determine whose benefit it was used for.

The Court: Answer the question.

A. Will you repeat the question?

(Question read.)

A. No, sir.

Q. Now, Mr. Kyne, after the Transit Smoke Shop was acquired in November, 1946, was it in operation until the end of the year? [1007]

A. Yes, sir.

Q. Did you take any part in the management of the Transit Smoke Shop? A. No, sir.

Q. Or did you take any part in the conduct of the business? A. No, sir.

Q. Now as a result of the operations during 1946, was any money paid to you by way of profit?

A. I believe a thousand dollars, I am not sure.

Q. And what, if anything, did you do with the money that was paid to you?

A. Put it in box 48.

Q. That is box 48 of the Bank of America?

A. Yes, sir.

Q. Did you personally use for yourself the

(Testimony of William E. Kyne.)

money paid to you as profit of the Transit Smoke Shop for the year 1946?

Mr. Gillen: Objected to as leading and suggestive, calling for opinion and conclusion and calling for self-serving statement.

The Court: Objection overruled.

Mr. Gillen: It is incompetent, irrelevant and immaterial whether he personally used any profit that he got.

The Court: Objection overruled. You may answer the question.

A. No, sir. [1008]

Q. Was that money used for any purpose?

A. It could have been used in the pool room.

Q. If you know?

A. I say it could have been used in the pool room.

Q. What is your best recollection?

A. I don't remember.

Q. Now will you describe the nature of the operation at the Transit Smoke Shop?

A. It is cigar store and liquor store.

Q. Were any games operated there?

A. Dice games.

Q. And what type of dice games?

A. A game called 26.

Q. Will you state the nature of that game?

A. I believe it is played with five dice.

Q. And will you state in that operation whether that game was played for money or for merchandise?

A. Money.

(Testimony of William E. Kyne.)

Q. I call your attention to plaintiff's Exhibit 92, the partnership return of income of the Transit Smoke Shop, bearing signature of Gordon A. Par-tee, and ask you if you have seen that return before? A. No, I have not.

Q. Do you have a recollection, Mr. Kyne, of the amount of profit arising during the operation in November and December of [1009] 1946 from dice games?

Mr. Gillen: Objected, assuming something not in evidence. Assuming there was a profit.

Q. —profit, if any? A. No, I don't.

Q. I call your attention to the fact that on plaintiff's Exhibit 92, the return of the Transit Smoke Shop for the period November 1, 1946, to December 31, 1946, there appears under "Other Income," pins, etc., \$1248.51; games, \$5843.43, and I will ask you if that refreshes your recollection as to the amount of profit that came from that source?

Mr. Gillen: Objected to as having been asked and answered. He said he didn't know.

Mr. Campbell: And I asked if that refreshed his recollection.

Mr. Gillen: He said he hadn't seen this return before.

The Court: You may answer the question yes or no.

A. No, sir.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

Afternoon Session—December 18, 1951

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on further [1010]

Direct Examination

By Mr. Campbell:

Q. Mr. Kyne, with reference to the Day-Night Cigar Store, I direct your attention to plaintiff's Exhibit 117, book of accounts, under the heading "Capital" account, headed "William E. Kyne, Investment Account," are you familiar with that account? A. No, sir.

Q. Have you ever seen that before?

A. No, sir.

Q. It would appear from this account that a contribution was made in the name of William E. Kyne for equipment, \$10,400, inventory \$5600, or a total of 16 thousand dollars investment. Did you ever make any such investment? A. No, sir.

Q. State whether or not that is the money which you referred to as having been paid by Mr. Remmer? A. That I can't say.

Q. That is the same amount?

A. That room cost 16 thousand dollars, the B & R Smoke Shoppe, I think we put in about six thousand.

Mr. Gillen: Is that the B & R or the Day and Night?

(Testimony of William E. Kyne.)

A. 186 and Day-Night.

Mr. Gillen: I thought Mr. Kyne said B & R.

Q. You mean to refer to the Day-Night Cigar Store? A. Yes, sir. [1011]

Q. Now, Mr. Kyne, immediately adjoining the B & R Smoke Shoppe and your offices at 50 Mason Street, will you state whether or not, in connection with the operations of the various enterprises there was rented a storeroom or warehouse?

A. Yes, sir.

Q. And what was the location of that storehouse? A. 52 Mason.

Q. First let me ask you, what was the type of building which was rented there?

A. Probably an empty store. We used it as a warehouse for whiskey.

Q. And over what period of time, Mr. Kyne?

A. Until we gave up the place at 50 Mason.

Q. When was that? A. I don't remember.

Q. Was that after 1946? A. Yes.

Q. And when did you first acquire that location?

Mr. Gillen: After 1946?

Mr. Campbell: He said yes.

Mr. Gillen: When was that acquired, after 1946?

Mr. Campbell: No, he said he gave it up after 1946.

(Record read.)

Q. Were those premises known as 52 Mason Street? A. Yes, sir. [1012]

Q. When did you acquire the occupancy of those premises?

(Testimony of William E. Kyne.)

A. I don't remember. It was after we were at 50 Mason. I don't remember the exact date.

Q. Can you state whether or not it was acquired prior to the year 1944? A. I wouldn't know.

Q. Can you state whether it was acquired prior to the time that you went into the army?

A. Before, yes.

Q. Now you say you used that for storing what?

A. Whiskey.

Q. And to what enterprise or enterprises did that whiskey belong?

A. I believe it was 110 Eddy and 186 Club, or rather Day-Night Cigar Store.

Q. And was any other whiskey stored there?

A. I don't remember.

Q. Now during the time that you were associated with Mr. Remmer, and prior to the end of 1946, did you participate in the handling of any deals for the purchase of whiskey? A. Yes.

Mr. Gillen: Just a moment——

The Court: The answer may be stricken.

Mr. Gillen: That has been asked and answered very early in this witness' testimony. He said the only participation [1013] he had was that he obtained a cashier's check in payment of some whiskey.

The Court: He may answer the question. The answer may stand. He answered it yes.

Q. And in that connection did you have anything to do with the purchase of some whiskey through the Sierra Wine & Liquor Company?

(Testimony of William E. Kyne.)

A. No, sir.

Q. Did you, yourself, participate by way of investment or otherwise in any such purchase?

A. No, sir.

Q. In that connection I am going to show you plaintiff's exhibit 65, a check from the Sierra Wine & Liquor Company, payable to cash, \$17,739.50, and the endorsement on the rear thereof, William Kyne, and ask you if that is your endorsement?

A. Yes, sir.

Mr. Gillen: Just a moment——

The Court: The answer may go out.

Mr. Gillen: I renew my objection, may it please the Court, this question has been asked and answered. It is an attempt to impeach his own witness. I call your Honor's attention to the fact that the record shows at the outset of this man's testimony he was asked if he had anything to do with the 21 Club, the San Diego Social Club or Cal-Neva and he said no. He was asked if he had anything to do with the purchase of any [1014] liquor and his testimony was that he purchased a cashier's check for payment of some whiskey.

The Court: Objection will be overruled. The witness has answered the question. Read the question.

(Question read.)

A. Yes, it is.

Q. I call your attention also to some figures appearing in green ink on the reverse of this check and ask you if those are your figures?

(Testimony of William E. Kyne.)

A. Yes, sir.

Q. Do you recall when this came into your possession?

A. I believe originally was 34 thousand dollars payable to cash; in fact, I note on it reference to Haas Bros.

Q. I am referring now to this particular check. Do you recall when the particular check of the Sierra Wine & Liquor Company came into your possession?

A. It was after the check was issued for 34 thousand dollars.

Q. I call your attention to the fact that this is dated November 14, 1943, and is perforated paid 11-15-43.

Mr. Avakian: Pardon me, I believe counsel misread the perforation. I think it was 12.

Mr. Campbell: It couldn't be 12—it is dated 11—

Mr. Avakian: It was cashed in December.

Mr. Campbell: I see, yes, 12—what do you make out the balance—12-3-43 it appears. [1015]

Mr. Avakian: That is right, counsel, I believe.

Q. What, if anything, did you do with the cash which you secured from this check?

A. Put it in my Box 48.

Q. What, if you know, was subsequently done with that cash?

A. To be used as we needed it, whether the pool room, 186 Club or any other enterprise.

(Testimony of William E. Kyne.)

Q. Was any of the money used for your personal benefit? A. No, sir.

Mr. Gillen: I move the answer be stricken.

The Court: The answer may go out.

Mr. Gillen: I am going to object to that as calling for opinion and conclusion and self-serving statement. If he was a partner and it was used in the partnership enterprise, at least indirectly it would be used for his benefit.

The Court: Objection overruled and the answer may stand.

Q. Now you stated, Mr. Kyne, that the check which I have shown you was given to you subsequent to a check received from Haas Bros. Will you state whether or not some transaction was had with Haas Bros., relating to the purchase of whiskey? Answer that yes or no.

A. Will you repeat that, please?

(Question read.)

A. Yes, sir.

Q. Do you recall when that transaction was had? [1016] A. No, I don't.

Mr. Campbell: I will ask to have this marked for identification, containing photostatic copy of two documents.

The Clerk: One hundred and twenty-one.

Mr. Campbell: I ask also to have marked as part of 121 for identification a second series of photostats, all to be part of 121 for identification, 121-A.

(Testimony of William E. Kyne.)

Q. Now in connection with the transactions had with Haas Bros., do you recall whether or not a cashier's check was purchased?

A. I am quite sure it was.

Q. And by whom was it purchased?

A. Myself.

Q. Do you recall the amount of that cashier's check? A. Around 34 thousand.

Q. And will you state whether or not any of the funds used to purchase that cashier's check were your personal funds? A. No, sir.

Q. Who, if anyone, supplied you with the funds to purchase that check? A. Mr. Remmer.

Q. And in what form was it supplied to you?

A. In cash.

Q. Do you at this time recollect when that cashier's check was purchased?

A. No, I don't. [1017]

Q. I am going to show you Plaintiff's Exhibit 121 for identification and ask you if that refreshes your recollection as to the date upon which the cashier's check was purchased?

A. I purchased the check. I don't remember the date.

Q. I call your attention to the photostatic copy of the application for the check and ask you if that is your signature that appears thereon?

A. Yes, sir.

Q. I call your attention to the date of the application, September 8, 1943.

Mr. Gillen: Just a moment—may it please the

(Testimony of William E. Kyne.)

Court, it is not in evidence, it should not be read from.

The Court: I think so.

Mr. Campbell: Very well. Do those photostats relate to the transaction which you have described?

A. Yes, sir.

Mr. Campbell: I am going to offer this in evidence, without, however, the top portion pencilled notes, which I will remove from the exhibit.

Mr. Gillen: We have no objection to its going in evidence. My objection previously was it was only offered for identification and the contents should not be read.

The Court: Yes. That is Exhibit 121 that is now being offered?

Mr. Campbell: Yes. [1018]

The Court: It will be admitted in evidence, 121.

Q. Showing you Government's Exhibit 121, you have identified your signature on the application?

A. Yes.

Q. And I will ask you whether or not, Mr. Kyne, the money paid to Haas Bros. was subsequently refunded by them?

A. Half of it was refunded to me.

Q. Mr. Kyne, I am going to show you Plaintiff's Exhibit 121-A for identification, photostatic copy of a check, and call your attention to the endorsement, "William Kyne," and ask you if that is your signature? A. No, sir.

Q. Do you recognize the handwriting of the signature "William Kyne"?

(Testimony of William E. Kyne.)

A. No, sir; I can't say I do.

Q. Did you at any time authorize anyone to place your signature on the document which you hold in your hand?

A. Mr. Remmer has my power of attorney.

Q. Referring to this specific document, did you at any time authorize anyone specifically with respect to this document?

Mr. Gillen: Objected to as having been asked and answered. He said he authorized nobody to use his signature except Mr. Remmer, who had his power of attorney.

The Court: Objection overruled. Answer this question.

Q. Do you want the question read? [1019]

A. Yes, sir.

(Question read.)

A. No, sir.

Q. Let me ask you this, Mr. Kyne, did you ever see this document before? A. No, sir.

The Court: I would like to have that cleared. Do you mean this document or the original of it?

Mr. Campbell: I shall reframe my question.

Q. Mr. Kyne, did you ever see the original document of which this is a photostat?

A. Yes, sir.

Q. When did you see it?

A. I believe in your office.

Q. The original document? A. Yes, sir.

Q. And was that the first time that you ever saw it? A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Do you recall the date, Mr. Kyne?

A. No, I don't.

Q. Was that on or about May 3, 1950?

A. 1950?

Q. Yes. A. No, sir.

Q. What is your best recollection? [1020]

A. Period from '43 to '45.

Q. That you saw it in my office?

A. Oh, in your office—excuse me, I misunderstood your question.

Q. When was it that you first saw the original of the document, of which this is a photostatic copy? A. May, 1950.

Q. Prior to that time had you known any such document was in existence?

Mr. Gillen: Objected to as incompetent, irrelevant and immaterial.

The Court: Objection overruled. You may answer the question.

A. It had to be in existence for me to get the half back.

Mr. Campbell: I don't think that is responsive.

The Court: The answer may be stricken.

(Question read.)

The Court: Answer that yes or no.

A. Yes.

Q. And from whom had you learned that such a document was in existence?

A. I received the check for 17 thousand dollars

(Testimony of William E. Kyne.)

for half of the carload of whiskey, received that back.

Q. And from whom did you receive a check for 17 thousand dollars? [1021]

A. From Mr. Remmer.

Q. Do you recall upon what account that check was drawn? A. I believe from a Reno bank.

Q. Which bank?

A. I believe from a Reno bank.

Q. Do you recall what Reno bank?

A. No, I don't.

Q. And do you recall when it was that you received that amount? A. I don't remember.

Q. As I understand your testimony, was it at that time that you learned of the existence of the original document, of which 121-A is a photostatic copy, is that right?

Mr. Gillen: Objected to as asked and answered.

The Court: I think that has already been answered.

Q. During the years 1944 to 1946, other than the two boxes which you have testified about, to which Mr. Remmer had access, that is to say, Box 48 in the Day and Night Branch of the Bank of America, and the box under the name of Henry Clay in the Crocker First National Bank, do you know of other safety deposit boxes which Mr. Remmer maintained?

Mr. Gillen: Objected to—that was asked and answered yesterday.

(Testimony of William E. Kyne.)

The Court: Objection overruled. Answer the question.

A. Concerning Remmer's personal box?

Q. Yes, other boxes to which he may have had access. Do you [1022] have any knowledge of that?

A. No, sir.

Q. Now other than the bank accounts to which you have testified, that is bank accounts upon which you were signator, of various enterprises, do you know of any bank accounts which Mr. Remmer maintained during the years 1944 to 1946, inclusive?

A. I believe he had a personal account in a bank in Tracy, California.

Q. Is that the Bank of America, do you know?

A. I believe it is.

Q. Where is Tracy, California, with relation to San Francisco?

A. It is right outside of Stockton, southeast.

Q. Approximately how many miles from San Francisco?

A. About 90 miles.

Q. And what other bank accounts did you know of at that time?

A. That is the only one.

Q. Now you have referred to a check given to you by Mr. Remmer on a Reno bank. Do you recall the signature on that check?

A. I believe it is Pete Barengo.

Q. Is the check that you are referring to that Mr. Remmer gave you Plaintiff's Exhibit 65?

A. Yes, sir.

Q. And this is the check by which you say you received back half of the 34 thousand dollars, is that correct? [1023]

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Do you know whether or not Mr. Remmer had an account in the Reno bank?

A. No, I don't.

Q. Mr. Kyne, were you acquainted with a man by the name of Badovinatz? A. Yes, sir.

Q. What was his first name?

A. He was known as Curley, that is his nickname.

Q. Where did he reside?

A. I believe he lived most of the time in Stockton, Stockton or Fresno.

Q. Do you know whether or not, during the years 1944 to 1946, he borrowed money from Mr. Remmer? A. I do not know.

Q. You have no knowledge of that subject?

A. No, sir.

Q. Do you know whether or not during that period of time he was a patron of any of the businesses with which you were connected?

A. He played at the 186 Club.

Q. But you have no knowledge of any loans made to him? A. No, sir.

Q. Did you ever discuss with Mr. Remmer the matter of a loan to Mr. Badovinatz? [1024]

Mr. Gillen: May it please the Court, this is four times that this witness has been asked about any knowledge of this loan. He said no, he had no knowledge in each instance, and now he is asking for a discussion. If those questions are asked repeatedly, we are going to prolong this trial indefinitely.

(Testimony of William E. Kyne.)

The Court: My understanding is in response to questions he stated he did not know if this individual borrowed money from Mr. Remmer.

Mr. Campbell: That is correct. I am asking if he had a conversation.

The Court: Objection overruled.

A. No, sir.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Gillen:

Q. Mr. Kyne, going back to your testimony, which began on December 14th, I understood you said that although you have known Mr. Remmer for some twenty years, that you had first engaged in business enterprises with him in the year 1941, is that correct? A. Correct.

Q. And you enumerated six different enterprises in which you were interested with Mr. Remmer, do you recall that? A. Yes. [1025]

Q. And those enterprises, as I recall, and the order in which they came into being, were first of all the B & R Smoke Shoppe, which came into being in 1941, if I recall, and after that the 110 Eddy Club, then the 186 Club and in conjunction with the 186 Club a separate enterprise known as the Day-Night Smoke Shop, and the Menlo Club, and finally the Transit Smoke Shop, is that correct, those were the six enterprises? A. Yes.

Q. I understood you to testify also that you never had anything to do in the way of any part-

(Testimony of William E. Kyne.)

nership interest or business interest in Cal-Neva Lodge at Lake Tahoe? A. That is correct.

Q. Nor did you have any interest with Mr. Remmer, or anybody else, in the 21 Club or the San Diego Social Club in El Cerrito, California?

A. Right.

Q. Now in the various enterprises that you have testified you had an interest in, the six I mentioned a moment ago, let me ask you whether or not, throughout the time that you were associated with Mr. Remmer, when those particular enterprises were operating, did Mr. Remmer spend any amount of time in and about any of those businesses, either managing or operating or overseeing or supervising? A. No, sir.

Mr. Campbell: May the answer be stricken and the question [1026] read?

The Court: Yes.

(Question read.)

The Court: The answer may stand.

Q. It is true, is it not, Mr. Kyne, that you were really the overseeing partner or the general manager of those various places? A. Yes, sir.

Q. And it is true Mr. Remmer left his interests and the welfare of his interests to you and to the various people who were employed under you, either as manager, bookkeepers or auditors or whoever they might have been? A. Yes, sir.

Q. Now did Mr. Remmer, to your knowledge, ever participate in keeping books on any of those

(Testimony of William E. Kyne.)

establishments or preparing books on any of those establishments? A. No, sir.

Q. Now you stated in your direct examination that of the six enterprises in which you were interested with Mr. Remmer, with regard to the first five of them, namely, the B & R, 110 Eddy, 186 Club, Day-Night Club and the Menlo Club, you never actually invested any money out of your own pocket, is that correct? A. Correct.

Q. That you received your partnership share, or your interest as a member of the corporation, as in the case of the 186 Club, [1027] without actually having taken any money out of your pocket and putting it in, is that true? A. That's right.

Q. Now also you were asked whether or not you had actually taken any money out of any of those organizations by way of profit and put that into your pocket, that is, other than the salaries or allowances or drawing accounts that you have mentioned, do you recall that? A. Yes.

Q. And you stated that you had not?

A. That's right.

Q. Now with relation to the Transit Smoke Shop, you did, did you not, make an investment in the Transit Smoke Shop? A. Yes, sir.

Q. In other words, there was 32 thousand odd dollars paid for the Transit Smoke Shop and you at a subsequent time borrowed some money from the Menlo Club and charged it against your account, isn't that correct?

A. Sixteen thousand; yes, sir.

(Testimony of William E. Kyne.)

Q. \$16,005 and I believe 50 cents, is that correct? A. That is right.

Q. And then you stated that that 16 thousand was placed by you in the general fund in Box 48 at the Day and Night Branch of the Bank of America? A. Yes, sir. [1028]

Q. And that money was then used for various partnerships wherever and whenever any part of it was needed, is that correct? A. Correct.

Q. And, of course, you were a member of all those partnerships, isn't that true?

A. Correct.

Q. Now the Menlo Club was purchased during the year 1945, while you were still in the United States Army, is that correct? A. Yes, sir.

Q. And away, of course, from San Francisco and you were informed that you had an interest in the Menlo Club, isn't that true? A. Yes, sir.

Q. And the amount of that interest was what, Mr. Kyne? A. I believe it was 15 per cent.

Q. Now it is true, is it not, Mr. Kyne, that from the very inception of your associations with Mr. Remmer, it was agreed between you and Mr. Remmer that you would have an interest with him in any San Francisco enterprise that he undertook, is that correct? A. That is correct.

Q. And you did during the period of time that you were together, between 1941, when the B & R Smoke Shoppe came into being, until the month of February of 1949, when you and Mr. [1029] Remmer no longer had enterprises together, with the

(Testimony of William E. Kyne.)

exception that you still remain on two of the licenses, you did have an interest in every enterprise that Mr. Remmer was interested in, is that true?

A. Yes, sir.

Q. And when I say every enterprise, I mean every enterprise in San Francisco.

A. Yes, sir.

Q. Now you recall, do you not, Mr. Kyne, being shown an agreement that was prepared with regard to the purchase of the Menlo Club and with regard to there having been given to you a 15 per cent interest in the Menlo Club?

Mr. Campbell: I object to the characterization of the document. The document speaks for itself and it doesn't so provide.

Mr. Gillen: What is wrong with it?

The Court: Let us have the question.

(Question read.)

Mr. Campbell: The document, if the Court please, provides he is to have a 15 per cent interest in and when certain sums are received back by Mr. Remmer out of the business, and I submit that is the provision of the document. It does not provide for an immediate 15 per cent interest.

Mr. Gillen: I will accept the difference.

Mr. Campbell: I object to the [1030] characterization.

The Court: Let us have the question.

Mr. Gillen: I will change my mind—I will not accept it. The agreement says he does have an immediate 15 per cent interest.

(Testimony of William E. Kyne.)

Mr. Campbell: I submit the document to the Court and the document must be read by its four corners.

Mr. Gillen: We will read the document.

Q. With the Court's permission, I will show you the original prosecution's Exhibit 113 in evidence, and a copy which is a little easier to read than the photostat. Mr. Kyne, will you look at Exhibit 113 and the typewritten two pages that are copies of 113 and tell us if you are familiar with that document as the agreement wherein you derived a 15 per cent interest in the Menlo Club?

Mr. Campbell: Objected to as assuming a fact not in evidence. The document speaks for itself, if the Court please, and does not provide for the characterization as stated by counsel.

Mr. Gillen: May I ask through the Court wherein he believes I mischaracterize this, because I would like to read him a paragraph here. You read Paragraph 8 on Page 1.

Mr. Campbell: First, if I may, I will read Paragraph 6. (Reads.)

Mr. Gillen: Now will you read Paragraph 8?

Mr. Campbell: (Reads Paragraph 8 and [1031] 9.)

The Court: Objection will be sustained.

Mr. Gillen: Now let me get this straight, so I won't be accused by counsel of mischaracterization again. Will it be stipulated by counsel that this agreement conveys to Mr. Kyne immediately a 15

(Testimony of William E. Kyne.)

per cent interest in the profits of this enterprise in Paragraph 8?

Mr. Campbell: I suggest the document speaks for itself.

The Court: He evidently will not accept the stipulation.

Mr. Gillen: Well, then, it is going to take about three-quarters of an hour to make this clear.

Q. Now, Mr. Kyne, you recall this agreement, do you? A. Yes.

Q. And you recall by the terms of that agreement that you were to receive, as indicated in Paragraph 8 of the agreement—and if you wish to look at it while I am interrogating you on it I will give you the original document—Paragraph 8 on the first page, you will find the paragraph which states that effective as of May 1, 1945, that you are given an immediate 15 per cent working interest in and to the profits derived from the operation of the aforesaid social room, restaurant businesses and so on, situated as aforesaid.

Mr. Campbell: Objected to on the grounds that the document speaks for itself.

The Court: May I see the document a [1032] moment?

Mr. Gillen: Paragraph 8 on page 1.

Mr. Campbell: I think the entire document should be examined.

The Court: The objection is sustained.

Mr. Gillen: Sustained what, so I may be guided?

The Court: I have Paragraph 6 in mind, Para-

(Testimony of William E. Kyne.)

graph 6 after the word "Witnesseth." Now keep that in mind.

Mr. Gillen: Paragraph 6 says——

The Court: Objection sustained.

Mr. Gillen: Will your Honor look at Paragraph 8?

The Court: No, I am through. The objection is sustained.

Mr. Gillen: Your Honor won't look at the rest of the document?

The Court: I have looked at it and studied it and heard it read and that is my view. Objection sustained.

Mr. Gillen: Is it your Honor's view that this man did not get any immediate interest——

The Court: My ruling explains my view.

Mr. Gillen: No, it does not to me, your Honor, I do not understand.

The Court: There will be no further explanation.

Mr. Gillen: I don't think there was any question pending for your Honor to sustain before it. I think counsel wanted you to look at the document.

Mr. Campbell: I refer to the question. [1033]

(Last question read.)

The Court: We had in mind the similar question, in substance would be the objection that the question assumes matters not in evidence. Now I am sustaining the objection to that question on that ground.

(Testimony of William E. Kyne.)

Mr. Gillen: What portion isn't in evidence? I want to be guided so I will not get in trouble with the Court and counsel. I want to conduct my examination with the least amount of trouble.

The Court: Just proceed.

Q. Did you read Paragraph 8 of the agreement, Mr. Kyne? A. Yes, sir.

Q. And did you observe in Paragraph 8 of the agreement that you were to immediately have an interest of 15 per cent of all profits derived?

Mr. Campbell: Objected to on the grounds the document speaks for itself.

The Court: Sustained.

Mr. Gillen: I wanted to ask him if he read it and understood what he was getting.

The Court: Objection sustained.

Mr. Gillen: Are you going to keep the jury in the dark about what this agreement is?

The Court: Mr. Gillen, that implies the Court is trying to keep the jury in the dark about some evidence. [1034]

Mr. Gillen: I am not implying the Court is trying to keep the jury in the dark.

The Court: There is nothing before the Court. Let us proceed. Objection sustained.

Mr. Gillen: I am trying to cross-examine this man on a document shown to him and introduced during direct examination.

The Court: I sustained the objection. There is nothing before the Court now.

Q. What did you receive by way of interest in

(Testimony of William E. Kyne.)

the Menlo Club under this agreement, Mr. Kyne?

Mr. Campbell: Objected to on the ground the agreement speaks for itself.

The Court: Sustained.

Q. Do you know what you received?

Mr. Campbell: Same objection.

The Court: Objection sustained.

Mr. Gillen: Certainly he is entitled to state if he knows what interest he had.

The Court: The Court has ruled.

Q. Did you have an interest in the Menlo Club?

Mr. Campbell: Same objection. The document conveys whatever interest there was and speaks for itself.

The Court: That objection is overruled. Answer the question.

Q. Did you have an interest in the Menlo [1035] Club? A. Yes, sir.

Q. What interest did you have in the Menlo Club in 1945?

Mr. Campbell: Same objection.

The Court: Objection overruled.

Mr. Campbell: It is an attempt to vary the terms of the document.

The Court: Objection overruled.

A. 15 per cent.

Q. What did you have 15 per cent in, the profits or in the actual tables or chairs?

Mr. Campbell: May I ask a question on voir dire?

The Court: Yes, you may.

(Testimony of William E. Kyne.)

Mr. Gillen: Just a minute——

The Court: I gave him permission.

Mr. Gillen: I know your Honor has given him permission, but I do not see any reason at this point why my cross-examination should——

The Court: I have given him permission to ask questions on voir dire.

Q. (By Mr. Campbell): Mr. Kyne, referring to the written contract, did that set forth the entire terms of your agreement with Mr. Remmer relative to the Menlo Club?

Mr. Gillen: Objected to—the document speaks for itself.

A. I have 15 per cent working interest in the Menlo Club.

Mr. Gillen: I ask that the question be read and the [1036] answer be stricken.

The Court: Read the question.

(Question read.)

Mr. Campbell: That may be answered yes or no.

Mr. Gillen: Just a minute—this is his witness.

The Court: There is nothing before the Court. He may answer yes or no.

Mr. Gillen: Objected to; he is cross-examining his own witness.

The Court: Objection is overruled. Read the question once more, please.

(Question read.)

The Court: Answer it yes or no.

A. Can I read the document again?

(Testimony of William E. Kyne.)

The Court: Yes, you may, and the objection is overruled, and I wish counsel would make a practice, when they object to a question to state all their grounds in one objection, so we don't have constant rulings on all the grounds known to Mr. Wigmore for making objections.

Mr. Gillen: There is nothing wrong to stating our grounds.

The Court: The Court has made a request and we desire to have that done.

Mr. Gillen: I object on the ground Mr. Campbell is making [1037] speeches.

The Court: Mr. Gillen, let's get along now. Now we will have the question read to the witness.

(Question read.)

A. Yes, sir.

Mr. Campbell: That is the only question I have.

The Court: Now you may proceed, Mr. Gillen.

Mr. Gillen: May I have the answer of this witness prior to the interruption on voir dire?

(Question read.)

Mr. Campbell: I now object to that question on the grounds the document speaks for itself.

The Court: Objection sustained. The answer may go out.

Q. You stated in answer to question by counsel that you had 15 per cent working interest in the profits; is that a fact?

Mr. Campbell: Objected to as assuming a fact not in evidence.

(Testimony of William E. Kyne.)

The Court: Objection sustained.

Q. What did you state to counsel was your interest?

Mr. Campbell: The record is the best evidence.

The Court: Objection sustained.

Mr. Gillen: I will have the record read, his whole testimony regarding the Menlo Club.

The Court: We won't stop to do that now.

Mr. Gillen: Then I will have to stop my [1038] examination. If he says the record is the best evidence, I can't go on until we get that point cleared up.

The Court: What point do you want cleared up?

Mr. Gillen: I want what interest Mr. Kyne had in the Menlo Club.

The Court: I am not going to have the whole record read.

Mr. Gillen: I could clear it up in a couple of questions. Counsel said the record was the best evidence.

The Court: We will excuse the jury and comply with your request. You want the record read, do you?

Mr. Gillen: I don't; counsel wants the record read.

Mr. Campbell: No, I do not.

Mr. Gillen: He says the record is the best evidence.

The Court: So you don't want the record read now? If you do, we will send the jury out.

Mr. Gillen: No, I can get at it in another way.

Q. Mr. Kyne, did you state to counsel you had

(Testimony of William E. Kyne.)

15 per cent working interest in the Menlo Club?

Mr. Campbell: Objected to; the record is the best evidence.

Mr. Gillen: I will withdraw the question.

Q. Did you have 15 per cent working interest in the Menlo Club in 1945?

Mr. Campbell: Objected to; the contract speaks for itself.

Mr. Gillen: This is cross-examination. [1039]

The Court: Objection sustained.

Mr. Gillen: In cross-examination I can ask him the same question twice. .

The Court: I sustained the objection.

Q. Do you know what your interest was in the Menlo Club?

Mr. Campbell: Objected to on the same ground.

The Court: Sustained.

Q. Did you have any interest in the Menlo Club?

Mr. Campbell: Same objection.

The Court: Sustained.

Q. Look at this agreement and tell me what was meant by working interest in the amount of 15 per cent?

Mr. Campbell: Same objection, may it please the Court.

The Court: Objection sustained. Now I am going to respectfully suggest that you do not pursue this line any further.

Mr. Gillen: This line of what?

The Court: Pursuing this same subject that has been covered by my rulings, sustaining objections

(Testimony of William E. Kyne.)

to your questions. I think when the Court has ruled on a subject, then it is no longer proper to persist with questions along the same line.

Mr. Gillen: May it please the Court, this man was examined specifically——

The Court: I just made a suggestion. [1040]

Mr. Gillen: I respectfully suggest I have a right to pursue——

The Court: You may proceed.

Mr. Gillen: Could we be heard on this matter in the absence of the jury?

The Court: No, there is nothing before the Court.

Mr. Gillen: Your Honor, it is cross-examination of the witness on matters gone into on direct.

The Court: I have sustained the objection, and if you *do like* the rulings, you can take it on appeal. That is my ruling.

Mr. Gillen: I take exception to your Honor's remarks, that there would be a necessity for appeal in this case.

The Court: Very well. Go ahead.

Mr. Gillen: I demand at this time, for the record, that we be permitted, out of the presence of the jury, to be heard on our right to cross-examine Mr. Kyne with regard to his interests, both in the Menlo Club and any other enterprise in which he was interested with the defendant Remmer.

The Court: The request will be denied.

Q. Mr. Kyne, what happened to your 15 per cent

(Testimony of William E. Kyne.)

share of any profits of the Menlo Club during the years 1944 to 1946, inclusive?

Mr. Campbell: Objected to as assuming a fact not in evidence. [1041]

The Court: Objection sustained. Now I am going to send the jury out.

(Jury and alternate jurors admonished and excused at 2:15 p.m.)

(Argument in the absence of the jury. N.B. 325, pp. 89-100; N.B. 326, pp. 1-3.)

2:50 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Mr. Gillen: It is my understanding that we are permitted to question Mr. Kyne concerning his agreement with the Menlo Club.

The Court: Yes, particularly in regard to that paragraph 8.

Mr. Gillen: Yes, your Honor.

Q. Now, Mr. Kyne, with the Court's permission, I will hand you the prosecution's Exhibit 113, which is the agreement in which is provided that you are

(Testimony of William E. Kyne.)

given a 15 per cent working interest in the profits of the Menlo Club, and when the full purchase price of the Menlo Club, to wit, \$175,000, has been recovered out of the profits and returned to the initial investor, [1042] Mr. Remmer, that you are to receive then a 15 per cent interest in the physical assets of the Menlo Club. Do you have that paragraph in mind? A. Yes, sir.

Q. Now, Mr. Kyne, did you participate in 15 per cent of the profits of the Menlo Club, commencing as of May 1, 1945, the date the Menlo Club was purchased, throughout the period of time that you were associated with the Menlo Club?

A. Yes, sir.

Q. And you stated that you did not draw any of the profits that were credited to you; is that correct? A. Yes, sir.

Q. What happened to those profits that were credited to you; where did they go?

A. Credited to my account on the books of the Menlo Club.

Q. And that was credited to your account toward building up your equity in the physical assets of the Menlo Club; is that correct? A. Yes.

Mr. Campbell: We object to the last question and move the answer be stricken.

The Court: It may go out.

Mr. Campbell: On the ground that would vary the terms of the agreement.

The Court: Let me have the question. [1043]

(Question read.)

(Testimony of William E. Kyne.)

The Court: The answer may stand.

Q. Now, Mr. Kyne, you were questioned by Mr. Campbell regarding the purchase price of the Menlo Club as it is set forth in this agreement. Do you recall that you were questioned on the agreement, the purchase price? A. Yes, sir.

Q. And do you recall that the agreement, which is in your hands there, set forth that the purchase price of the businesses referred to as the Menlo Club at 30-32 Turk Street and 24 Turk Street, 18 Turk Street, were purchased for a total of 175 thousand dollars? Do you recall that?

A. Yes, sir.

Q. And you were asked by Mr. Campbell if that 175 thousand dollars had been paid by anyone and you said it had been paid by Mr. Remmer.

Mr. Campbell: Objected to as stating a fact not in the record. Mr. Kyne testified he was in the army when that thing was purchased and I think counsel——

Mr. Gillen: We will show it to you in the record.

Mr. Campbell: Yes, I would like to see it.

The Court: I have a note here—I don't know whether it would be any use—just before that Exhibit 113 was offered, the Menlo Club acquired in '45 while he was away; Mr. Remmer told him he had an interest after [1044] his return. There was a written agreement.

Mr. Gillen: That is correct, your Honor, and there is some other testimony regarding the amount of money paid.

(Testimony of William E. Kyne.)

Mr. Campbell: There is this testimony beginning at the top of page 926 as follows: (Reads).

Mr. Gillen: Of course, that was for 15 per cent interest in the physical assets of the property, not as to profits.

Mr. Campbell: I object to that.

The Court: Let us have the question.

(Question read.)

Mr. Campbell: I know of no such testimony in the record.

Mr. Gillen: I may be wrong.

The Court: I do not recollect that myself.

Mr. Gillen: I can reframe my question, in the interest of time.

Q. Mr. Kyne, you understood, did you not, that retroactive as of May 1, 1945, you were participating in a 15 per cent interest in the profits that came out of the Menlo Club?

Mr. Campbell: I object to the question in that form.

The Court: Objection overruled. Answer the question.

A. Yes, sir.

Q. And you understood, did you not, that you were to leave your 15 per cent interest in the profits toward building up on the books your equity toward the ultimate equivalent of 15 per cent of the physical assets of all the businesses comprising the Menlo Club? [1045]

Mr. Campbell: Objected, the document speaks

(Testimony of William E. Kyne.)

for itself. Further, I suggest that the form of the question is improper, in that the witness should be permitted to state his understanding rather than counsel stating the understanding to him, and in that regard it is not within the scope of direct examination.

Mr. Gillen: This is cross-examination, your Honor.

The Court: Objection overruled. Answer the question.

Q. Do you have the question in mind?

A. Yes, sir.

Q. Did you learn, from your own knowledge, how or in what manner the Menlo Club was purchased; that is, was it all paid for at once, or notes given, or how the purchase was made?

Mr. Campbell: Objected to as calling for hearsay, the witness having testified he was in the service.

The Court: He can state whether or not he knows. He can answer that yes or no.

A. No, I don't know.

Q. Do you know anything about any notes that were given for the Menlo Club? A. No, sir.

Q. Do you know, of your own knowledge, whether or not the 175 thousand dollars that was the purchase price for the Menlo Club had ever been fully paid? A. No, sir.

Q. Do you know of your own knowledge whether or not the Menlo [1046] Club had, by way of profits, returned to Mr. Remmer the amount of his investment? A. No, sir.

(Testimony of William E. Kyne.)

Q. Do you know, when the Menlo Club closed, what the books reflected as to the interest that you had acquired by way of participating to the extent of 15 per cent in the profits of the Menlo Club?

Mr. Campbell: Objected to on the grounds the books are the best evidence.

The Court: That objection may be good.

Mr. Gillen: I think that objection is good.

Q. Let me ask, eliminating the books, do you know, of your own knowledge, what equity you had acquired in the Menlo Club from profits by way of participating to the extent of 15 per cent?

Mr. Campbell: As of what date?

Mr. Gillen: As of the date the Menlo Club closed.

Mr. Campbell: Objected to as a period beyond December 31, 1946.

The Court: Objection overruled. Answer the question.

A. I don't know.

Q. Do you have any idea at all?

A. No, sir.

Q. Now let me ask you, Mr. Kyne, with regard to the B & R Smoke Shoppe, the first enterprise that you and Mr. Remmer entered into together. Did you have a working interest similar to [1047] the working interest that you had in the Menlo Club in that organization?

Mr. Campbell: If he is referring to a similar document to the written document, I submit the written document is the best evidence.

(Testimony of William E. Kyne.)

The Court: I will sustain the objection.

Q. Let me ask you this, Mr. Kyne—

The Court: The reason is, I do not think we should bring that out by comparison.

Mr. Gillen: Very well, I think we can reach it another way.

Q. Mr. Kyne, you testified that in 1941, without making an actual cash investment, that you acquired a 25 per cent partnership interest in the B & R Smoke Shoppe; is that correct?

A. That is correct.

Q. Was the agreement regarding your 25 per cent interest with your partners reduced to writing, or was it an oral agreement? A. Oral.

Q. What was the nature of that agreement? Was it a working interest that would ultimately enable you to acquire 25 per cent in physical assets, or was it another kind of agreement?

Mr. Campbell: I am going to object to the question in that form, as calling for the witness' characterization of the agreement.

(Question read.) [1048]

The Court: It is a leading question, but I understand leading questions are proper on cross-examination.

Mr. Campbell: My objection is not that it is leading; it is calling for characterization of agreement, the agreement not being before the Court.

The Court: You may answer the question.

A. It was a working agreement.

(Testimony of William E. Kyne.)

Q. Will you just state what the agreement was?

A. I received 25 per cent of the profits and ten dollars a day.

Q. Were you to withdraw those profits, 25 per cent of the profits, or were you to leave them in the business for any period of time, or for any reason?

A. I believe we gave Mr. Remmer back his bank roll.

Q. In other words, you were to leave your profits in the business until Mr. Remmer had recovered his initial investment; is that correct?

A. I think that is it.

Q. Now in regard to the second enterprise that you went into with Mr. Remmer and one other person, as I recall, 110 Eddy Street tavern, what was your interest in that?

A. That was a working interest.

Q. I mean what percentage?

A. I wound up with 25 per cent.

Q. Was the agreement with regard to your partnership in the 110 Eddy Street reduced to writing or was it an oral agreement? [1049]

A. Oral.

Q. Now I understood your testimony to be that with regard to that 25 per cent you had actually put in no investment?

A. That's correct.

Q. You received 25 per cent under a working agreement; is that correct?

A. Yes, sir.

Q. And were you to withdraw 25 per cent of the profits or were you to leave it in the business for any reason?

A. Building up the inventory.

(Testimony of William E. Kyne.)

Q. You were to leave it in the business to build up the inventory? A. Yes, sir.

Q. Is that what happened? A. Yes, sir.

Q. Now with regard to the B & R Smoke Shoppe and with regard to the 110 Eddy Street tavern business, you were chargeable on the books of those businesses with the profits, a share of the profits to which you were entitled?

Mr. Campbell: Objected to—the books are the best evidence.

The Court: Objection sustained.

Mr. Gillen: I think those are in evidence.

Mr. Campbell: I still say they are the best evidence of their contents. [1050]

Q. You paid income taxes, did you not, on your share of profits that were credited to you; isn't that so? A. Yes, sir.

Q. Where did you get the money to pay income tax on the share of profits credited to you in those two businesses, namely, the B & R and 110 Eddy?

A. I had money for the B & R Smoke Shoppe myself and got 110 money from Bob Slater, the bookkeeper.

Q. Now with regard to the 186 Club, what was your interest in that Club? A. One-sixth.

Q. And if I remember correctly, that is the enterprise that was originally started as a partnership with seven persons, each owning one-sixth interest and two of the persons owning one-sixth between them; is that correct? A. Yes.

Q. And then after eight months or a year, at

(Testimony of William E. Kyne.)

the direction of the man from the Internal Revenue Department, you were required to change that from a partnership to a corporation?

A. That is right.

Q. Now as I recall your testimony, you testified that you did not actually put any money in for that one-sixth interest in the 186 Club; is that correct?

A. Yes.

Q. What was the nature of your interest [1051] in that? A. Working interest.

Q. Was that working interest arising out of agreement that was reduced to writing, or was that an oral agreement; I mean initially?

A. It was oral.

Q. Subsequently, when it was set up as a corporation, there were some corporate papers kept on it, some minutes, references; is that correct?

A. That is correct.

Q. Now with regard to the 186 Club, I believe that was the enterprise that made no money; is that correct? A. That is correct.

Q. That is the enterprise that was filled with markers rather than cash?

A. That is correct.

Q. What was the arrangement, however, with regard to when you would acquire any interest in the physical assets in the event there were profits? In other words, were you to take out the profits or were you to leave them in the business for any reason? A. Take them out.

(Testimony of William E. Kyne.)

Q. You were to take out the profits in the 186 Club? A. Yes, sir.

Q. Now in the 186 Club, you paid some income tax on that, did you not? A. Yes, sir. [1052]

Q. Now let me go back for a moment to the inception of the 186 Club. Isn't it a fact that the agreement was that Mr. Kopstick and Mr. Nealis, who between them had put up some 16 thousand dollars for a one-sixth interest in the enterprise, between them were to receive their money back first? A. That is correct.

Q. And their money was given back to them out of the profits, isn't that correct? A. Yes.

Q. And as I understood your testimony yesterday, you gave it to them when, as, and if you were able to give it to them, in installments?

A. That is correct.

Q. Now you were, and the other persons interested with you were, nevertheless credited with certain profits out of that, were you not?

A. That's right.

Q. Do you recall, Mr. Kyne, the first year of the operation of the 186 Club when it was operated as a partnership, the profits were approximately 12 thousand dollars, as I recall?

A. I do not remember.

Q. Well, do you recall that two thousand dollars of the profits was credited on account of Mr. Remmer, do you recall that?

A. I don't remember.

Q. Do you recall that nobody drew down any

(Testimony of William E. Kyne.)

of the twelve thousand [1053] dollar profit in that first year because it was all turned over to Kopstick and Nealis to give them their money back and buy up their interest? A. I don't remember.

Q. I would like you to look at defendant's Exhibit "P." With the permission of the Court I will show you defendant's Exhibit "P" in evidence, and on the reverse side you will note the partnership interest, that is, what was credited to each person, and I will ask you if that refreshes your recollection the first year, while it was still operating as a partnership, the profit was 12 thousand dollars, each partner was given credit for a share of that, but that actually the whole 12 thousand dollars was turned over to Kopstick and Nealis to pay back their interest? A. That's correct.

Q. And then in addition to that 12 thousand dollars, there was four thousand dollars more to take Kopstick and Nealis out of that business?

A. There was no money given to the partners.

Q. There was no money given to the partners even though the partnership return for that year showed credit to the account of Busterna, two thousand, Casselini, two thousand, Kyne, two thousand and five cents, Lando, two thousand, Jess Kopstick, one thousand and Carl Nealis, one thousand, total of twelve thousand five cents; even though each partner was credited with having received [1054] that much profit, none of the partners took any money out except Kopstick and Nealis, who were given the money to buy out their one-sixth interest, is that correct? A. Yes.

(Testimony of William E. Kyne.)

Q. And the reason, I presume, Kopstick and Nealis were each shown to have credit of one thousand dollars instead of two thousand against every other partner was because they owned one-sixth between them, is that correct? A. Correct.

Q. And they were splitting between them the profit on the one-sixth interest? A. Yes, sir.

Q. Now, Mr. Kyne, after approximately a year, or the following year then, due to the direction of a man from the Internal Revenue Department, the 186 Club was thereafter set up as a corporation?

A. Yes, sir.

Q. And that is when it began to get markers instead of money and made no money, showed no profits, is that correct? A. That is correct.

Q. Now, Mr. Kyne, let me invite your attention now to the Day-Night Smoke Shoppe, which you recall was the store in front of the 186 Club, being the social club in back and the Day-Night Cigar Store in front, is that correct?

A. That is right. [1055]

Q. That was a different enterprise altogether?

A. Yes, it was.

Q. That was retail liquor, cigars, magazines, periodicals, pin ball machines, is that true?

A. Right.

Q. In that organization or enterprise you had what, one-third interest? A. One-third.

Q. And your two partners, together with Mr. Remmer and Mr. Lando? A. Lando.

Q. Let me ask you whether or not the agreement

(Testimony of William E. Kyne.)

that gave you a one-third interest in the Day-Night Cigar Store was a written or oral agreement?

A. Oral.

Q. And what was the nature of your interest in that Day-Night? Was it a partnership or working agreement? A. Working.

Q. And as I understood your testimony on direct examination you had not actually put up any money for that one-third interest? A. That's right.

Q. And what was the agreement with regard to what should have been done, outside of drawing or salary or commissions, with the one-third profit? Was it to be drawn down by you or put [1056] back in the business?

A. We put it back into inventory.

Q. So that the business that originally showed one year inventory, the first year some 11 thousand dollars merchandise, is that correct?

A. I don't remember.

Q. Do you recall that that was the enterprise that doubled its inventory the following year?

Mr. Campbell: Objected to, the books and records of the business are the best evidence.

The Court: Objection sustained.

Q. Mr. Kyne, with the Court's permission, I will show you prosecution's Exhibits 84 and 86, and I will identify those for you as partnership income tax returns for the Day-Night Cigar Stand for the year 1944, being Exhibit 84, and the return for the same organization for the year 1946, being Exhibit 86. Will you look at the first page, where it states

(Testimony of William E. Kyne.)

what is the inventory in 1944 return and you will note there it shows inventory of 11 thousand dollars. A. \$11,889.

Mr. Campbell: As of what year?

Mr. Gillen: Beginning of year 1944, is that correct?

A. Yes.

Q. Now will you look at Exhibit 86 and will you tell us what it shows there for the inventory as of the year 1946 rather [1057] the end of the year 1946?

A. End of the year shows \$22,466.44 inventory.

Q. So you doubled your inventory. Now was there anything which was supposed to have been done in the way of returning initial investment to the initial investor out of the profits that were to be derived from the Day-Night Cigar Stand?

A. It all went back into inventory.

Q. Now let me ask you, the oral agreement, in which you and Mr. Remmer and Mr. Lando each held one-third interest in the Day-Night Cigar Store, did that oral agreement contemplate that Mr. Remmer was to receive his initial investment back out of the profits before the profits were to be drawn out by the partners? A. I think so.

Mr. Campbell: I ask that the answer be stricken as not responsive.

The Court: It may stand.

Q. Now, Mr. Kyne, the next enterprise then was the Menlo Club and as to that, we have already examined into that and found that that was the one

(Testimony of William E. Kyne.)

agreement that was reduced to writing, is that correct? A. Yes, sir.

Q. And your percentage was different, it was a 15 per cent interest in the profits?

A. Yes. [1058]

Q. Now finally the sixth enterprise that you became interested in with Mr. Remmer was the Transit Smoke Shop?

A. That is right. That was in writing also, the agreement.

Q. And in that instance you borrowed \$16,005.50 from the Menlo account and put that in as your share of the investment? A. Yes, sir.

Q. In the Transit Smoke Shop, is that correct?

A. Yes, sir.

Q. Then as I recall your testimony you took that 16 thousand dollars and put it into the box 48 and it was used as it was needed in the various enterprises in which Mr. Remmer was interested and which you were interested in, is that correct?

A. That's right.

Q. Now Mr. Campbell examined you, Mr. Kyne, regarding the records that you kept of the B & R Smoke Shoppe. Do you recall your examination on that subject? A. Yes.

Q. And you were shown, as I recollect, diaries for certain years, in which you had noted on the particular date pages when the transactions occurred initially, whether the enterprise had made any money or had lost any money on that day, is that true? A. That's right.

(Testimony of William E. Kyne.)

Q. And initially entries were very simply, simply showed lost so much money or won so much, as the case might be, is that correct? [1059]

A. That's right.

Q. And then you testified at some later time your mode of bookkeeping was changed to the extent of making more than one entry regarding losses or winnings, is that true? A. That's right.

Q. And you stated, in answer to a question by Mr. Campbell, that that was the way the government wanted you to do it, do you recall that answer? A. That is correct.

Q. Will you state what was meant by that answer and how that came about that was so?

A. Mr. Izraole suggested it.

Q. Who was Mr. Izraole?

A. Government agent.

Q. Of the Internal Revenue? A. Yes, sir.

Q. Had he checked over your accounts in his official capacity at one time or another?

A. He had all my accounts.

Q. What was the change that was suggested by Mr. Izraole?

A. That I enter the daily play, daily pay-out and daily take.

Q. In other words, when you say daily play, pay-out and take, Mr. Izraole wanted you to show how much money had passed through your hands in gross form and your disbursements and how much was retained by you, is that correct? [1060]

A. That is right.

(Testimony of William E. Kyne.)

Q. Now the play was the amount of betting that passed through your hands, is that correct?

A. Yes, sir.

Q. And the take, I understand, was the winnings? A. That's right.

Q. And the pay-out meant the losses plus the expenses, is that correct? A. That's right.

Q. And, thereafter, following that suggestion by Mr. Izraole, you kept those records that way?

A. That is correct.

Q. Now you were also questioned by Mr. Campbell regarding the transactions that are known in racing parlance as layoffs. There is only one form really of layoff, is there not; that is where a man making a book feels he has too much money on a horse and he lays it off to somebody who is willing to take part of the bet or risk with him, is that correct? A. That is correct.

Q. Now the matter of accepting part of a risk is not a layoff, is it? That is making a bet, so far as you are concerned. Do I make myself clear?

A. No, you don't.

Q. If I were to call you, Mr. Kyne, and say to you, I have twenty thousand dollars bet on a horse, I don't want to keep [1061] all of that, would you like to take some part of the risk with me, or some part of the bet, whatever you took from me I would be laying off to you? A. Giving me a bet.

Q. I mean so far as I am concerned, I would be laying off to you? A. Yes.

Q. Whatever part of that risk you would be

(Testimony of William E. Kyne.)

willing to take, you would be taking a bet, isn't that correct? A. Yes, sir.

Q. Now with regard to another situation that has been testified to here, I believe both by you and Mr. Lando, there is still another aspect of this laying off, which is where you do not care to take any money yourself, but you agree, as a matter of courtesy, to try to find someone who is willing to take some of the money, is that true? A. Yes.

Q. So if I had an opportunity to take 20 thousand dollars worth of bets on a horse and I thought I didn't want to take that entire risk and I called you up and asked you if you cared to take any and you didn't care to take it but you would agree to find somebody else who would take it, you would be merely doing me a courtesy, for which you earned no money, is that right? A. Yes, sir. [1062]

Q. Now, with regard to that courtesy business—let me put it this way so we can understand—it is a homely illustration that we may follow through—if I called you and say I have 20 thousand dollars on a horse and didn't want to carry all of it and you said you didn't care to take it on and I said, "Can you find somebody that might be willing to take some of it" and you found Mr. Avakian, for example, who was willing to take some of the risk, the money would pass through your hands, would it not? A. Yes, it would.

Q. Regardless of whether it was win or lose, it would pass through your hands, is that true?

A. That is right.

(Testimony of William E. Kyne.)

Q. So depending upon what resulted, you would either be sending some money to me or sending some money to Mr. Avakian? A. Yes, sir.

Q. And those are the kind of transactions that you handle with cashier's checks, is that true?

A. Yes, sir.

Q. Now, on those transactions, where you did not take any of the laid-off money yourself, but you found somebody else as a matter of courtesy for me, did you receive any emolument, any percentage, commission, or anything for doing that?

A. Only in the one instance I brought out the other day of the California Jockey Club. [1063]

Q. And that was a situation that existed only for a short period of time? A. That is right.

Q. But for professional bookmakers you receive nothing, is that correct? A. Yes.

Q. As a matter of fact, in those instances you were actually out any telephone tolls that you incurred? A. That is correct.

Q. And you did that as a matter of courtesy for what reason?

A. We expected the same treatment with other people.

Q. You expected reciprocal courtesies from whoever you helped out in situations, is that correct?

A. That is right.

Q. Now, Mr. Kyne, when you were examined regarding your accounts for the B & R Smoke Shoppe by Mr. Campbell the other day, there was produced in evidence, as I recall, your books for

(Testimony of William E. Kyne.)

the years, I think, 1943, 1945, and 1946, and no book for 1944. Do you recall that?

A. Yes, I do.

Q. As a matter of fact, I do not think books of 1945, because you were away in 1945.

Mr. Campbell: I think there is only one or two entries in the 1945 book.

Q. Let me ask you, Mr. Kyne, did you keep a set of records of [1064] the transactions of the B & R Smoke Shoppe for the year 1944?

A. Yes, sir.

Q. Did you keep them in the same manner, in the same kind of diary? A. Yes, sir.

Q. Did you turn over to the Internal Revenue agents your 1944 diary of the B & R Smoke Shoppe transactions, together with these other diaries that have been produced here? A. Yes, sir.

Q. When was that done by you?

A. I believe in '46.

Q. In 1946? A. I think so.

Q. May I have that diary? May I ask counsel, through the Court if I may have that 1944 diary?

Mr. Campbell: I will state that we have no such diary.

Q. Did you receive a receipt from the Internal Revenue agent? A. No, sir.

Q. Did you receive a receipt from the Internal Revenue man for any of the books that you turned over to him or any of the records?

A. I believe I have one receipt dealing with the 186 Club.

(Testimony of William E. Kyne.)

Q. Do you know where that is?

A. I think Conrad Hubner has it, I am not sure.

Q. Conrad Hubner is the tax lawyer in San Francisco, is that [1065] correct? A. Yes.

Mr. Gillen: I wonder if I might ask counsel, through the court, if the prosecution will produce any copy of any receipt they gave Mr. Kyne for any records turned over by Mr. Kyne to the Internal Revenue agents?

Mr. Campbell: I do not have any receipts. I do not know whether any were given or not. I can explore the subject.

Mr. Gillen: I wonder if we might ask counsel, through the Court, if he will seek to find any receipt given Mr. Kyne and also have the agents seek to find the 1944 diary?

Mr. Campbell: I have stated we do not have in our possession the 1944 diary.

Mr. Gillen: I wonder if they have receipt that might show what became of it?

Mr. Campbell: I object to this method of procedure.

Mr. Gillen: There is nothing improper about asking.

The Court: I understand counsel has stated the government hasn't the 1944 diary.

Mr. Campbell: And I am not prepared to answer the question as to receipts because I don't know, but I will explore that subject and will advise counsel.

Mr. Gillen: If counsel finds the 1944 diary, may

(Testimony of William E. Kyne.)

I ask through the Court that they produce it? I would like to examine it. [1066]

Mr. Campbell: I will be more than happy to.

Q. When you turned over the records of these various enterprises to the Internal Revenue man, you also turned over to them, did you not, your agreement on the Menlo Club?

A. I gave them a photostatic copy of it.

Q. With Mr. Remmer, about 15 per cent of the Menlo Club? A. Yes, sir.

Q. Now, by the way, who were the agents who took these records from you?

A. The first one was Izraole, then there was Weaver, Morgan, Marcus and some fellow back in the army, a captain.

Q. You don't recall his name?

A. Mr. Weaver will know.

Q. When you turned over these records to these agents, did any or all of them agree to return them to you?

A. They said I could have access to them.

Q. Now, Mr. Kyne, you were asked by Mr. Campbell yesterday, I believe it was, whether or not you personally had had anything to do with making out the individual income tax returns of the defendant, Elmer Remmer, during the years in question here, 1944, 1945, and 1946. Do you recall that question? A. I believe I do.

Q. And you answered that you had nothing to do with preparing the individual income tax returns of Mr. Remmer, is that right?

(Testimony of William E. Kyne.)

A. Yes, sir. [1067]

Q. Now, did you have anything to do with providing the data to be put into the individual income tax returns of Mr. Remmer.

A. Yes, sir.

Q. What did you have to do in that regard?

A. I gave the figures from each enterprise to Pat Mooney to make up the total.

Q. In other words, you gave the figures showing any profits or credits due Mr. Remmer from each enterprise, such as the B & R and 110 and 186 and Day-Night and so on, to Mr. Mooney?

A. That is correct.

Q. Now, of course I presume that the year that you were in the army—you left in the month of February of 1945 and didn't return, as I recall your testimony until June, 1946, from the service—I take it that year you were not here to provide those figures.

Mr. Campbell: I object to the question in that form, because the period related by counsel covers two filing dates.

The Court: Let me have the question.

(Question read.)

Mr. Gillen: I think, your Honor, there is in the record a showing here that Mr. Remmer's individual tax return was in that year extended and was not filed until after Mr. Kyne's return from the army.

The Court: He may answer the question.

A. I don't think I was here. [1068]

(Testimony of William E. Kyne.)

Q. Do you recall that the 1946 return of Mr. Remmer was not filed by reason of extensions being granted to both Elmer Remmer and Helen Remmer, until following your return from the service in 1946?

Mr. Campbell: I submit that question is misleading. That return would not be filed until 1947. It must be filed by the 15th of March for the succeeding year.

Mr. Gillen: I am in error on that. I withdraw the question. I have in mind the 1945 returns.

Q. Mr. Kyne, do you have any recollection of the fact that the 1945 returns, individual income tax returns, of Helen Remmer and Elmer Remmer were not filed by reason of extensions granted by the government until June 14, 1946, some weeks following your return to work from the service?

A. I wouldn't remember that.

Q. Well, let me show you prosecution's Exhibit 3, which is the 1945 return of Elmer Remmer and prosecution's Exhibit 4, which is the return for the same year of Helen Remmer; first, I will ask you to look at the receiving stamps on those and see if they refresh your recollection. If they do, all right, if they don't, all right.

Mr. Campbell: Unless the witness is familiar with the document, I don't see how it could refresh his recollection. These documents were prepared by another individual.

The Court: We will see if it does. [1069]

A. I wouldn't remember these documents.

(Testimony of William E. Kyne.)

Q. Let me ask you, Mr. Kyne, the data that you furnished regarding credits due Mr. Remmer out of the various enterprises, the date that you furnished Mr. Pat Mooney for the purpose of enabling him to make up individual tax returns of Elmer Remmer and Helen Remmer, was that data true and correct, to the best of your knowledge and ability to determine? A. Yes, sir.

Q. And did you give that data to Mr. Mooney, did he ask you for it or did you volunteer to give it to him, or how did it come about, if you recall?

Mr. Campbell: Objected to unless the use or years for which the data was given is developed.

Mr. Gillen: I will withdraw that.

Q. How many years did you furnish information to Mr. Mooney concerning individual income tax returns of Helen Remmer and Elmer Remmer?

A. About five or six years.

Q. How did he get the information from you?

Mr. Campbell: Objected to unless it be established for what years the data was furnished, so we can determine whether or not these questions are within the issues here.

Mr. Gillen: I am trying to save time.

Q. Can you tell us approximately within what year range you gave those? [1070]

A. From about 1942 on.

Q. From about 1942 on? A. Yes.

Q. For five or six years? A. Yes.

Q. Now, did you give him that data each year in those successive years, with the exception, of course, of the year that you were away in the service?

(Testimony of William E. Kyne.)

A. Yes, sir.

Q. How did he get that data from you, by telephone, personal contact, letter, or what?

A. He usually came to San Francisco on a vacation and took care of it then. If he couldn't come to San Francisco, I called him in Reno.

Q. You were shown a letter by Mr. Campbell, which is defendant's Exhibit "H," purporting to be a letter to you from Mr. Pat Mooney on date of March 7, 1947, and you were asked whether or not you recollect receiving that letter. Do you remember the question? A. Yes.

Q. And as I recall your answer, you said you did not remember receiving that letter.

A. No, I do not.

Q. Do you recall whether or not you ever received a letter of inquiry from Mr. Mooney regarding data for Elmer Remmer's income [1071] tax return? A. I received two or three.

Q. But you don't recall, or do you recall now, what they were about or whether this was one of them?

A. Well, he wanted me to give him the figures directly because Mr. Remmer used to lose them.

Q. In other words, if you gave the figures to Mr. Remmer, he would lose them before they got to Pat Mooney? A. That is right.

Q. And Mr. Mooney asked you to give him the figures directly? A. That is right.

Q. So am I correct in assuming that you would

(Testimony of William E. Kyne.)

not say that you did not receive that letter, you just don't recall?

Mr. Campbell: Objected to as argumentative.

The Court: Objection overruled. Answer the question.

A. I don't recall the exact letter.

(Jury and alternate jurors admonished and court recessed at 4:00 p.m.) [1072]

Wednesday, December 19, 1951, 10:00 A.M.

(Defendant present with counsel. Mr. Lohse absent.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumed the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Kyne, you have mentioned from time to time, through your direct examination and I believe your cross-examination also, that one safety deposit box that was maintained for taking care of case was Box 48 of the Day and Night Branch of the Bank of America, that is correct, is it? A. Yes, sir.

Q. I believe you also mentioned that there was a safe at 50 Mason Street, the main office to certain of the enterprises, is that true?

A. That is right.

(Testimony of William E. Kyne.)

Q. Was money kept in that safe during the years in question? A. Yes, sir.

Q. And then you mentioned also the Crocker safety deposit box that you and Mr. Remmer had together. Was money kept in that safety deposit box? A. No, sir.

Q. And that was the box the name Henry Clay was attached to? A. Yes, sir.

Q. And no money was kept there? [1073]

A. No, sir.

Q. I understood your testimony to be that Mr. Remmer never went to either Box 48 in the Bank of America nor the Crocker Bank box, is that true? A. I don't believe he did.

Q. And I believe you mentioned also there was a safe at 110 Eddy? A. Yes, sir.

Q. Was there money kept in that safe?

A. Yes, sir.

Q. Then when the Menlo Social Club was acquired, I believe you stated there was a safe at the Menlo Social Club? A. There was.

Q. Was money kept in that safe?

A. Just over night.

Q. That was part of your duties, to go and pick up that money, is that correct? A. Yes, sir.

Q. And take it usually to 50 Mason Street or Box 48? A. That is correct.

Q. In Box 48 was there an appreciable amount of money through the years?

A. It varied every day.

Q. Sometimes would be considerable and sometimes less? A. Yes, sir. [1074]

(Testimony of William E. Kyne.)

Q. Was that also the situation with regard to the safe at 50 Mason Street?

A. Well that the diary will show.

Q. And with regard to the safe at the Menlo Club, I think you said that was only left there over night? A. Over night.

Q. Now, in your direct testimony you were asked regarding a transaction wherein you obtained some money from Box 48 of the Day and Night Branch of the Bank of America, and with it purchased a check for 34 thousand some odd dollars, I think \$34,608, cashier's check made payable to Haas Bros.? A. That is correct.

Q. And you did that at the instance and request of Mr. Remmer, is that correct? A. Yes, sir.

Q. Haas Bros. is probably the largest wholesale grocery in San Francisco for the Northern California, is that correct? A. That is right.

Q. In other words, they are wholesale grocers who also deal in liquor and all food commodities, groceries? A. Correct.

Q. And then I understood your testimony to be that at some subsequent time—this check was issued, I recall in September of 1943?

A. I don't remember the exact date. [1075]

Q. You were informed, were you not, at that time that this check to Haas Bros. in the sum of \$34,608 was for the purchase of whiskey?

A. Carload of whiskey.

Q. Now, Mr. Kyne, prosecution's Exhibit 121 is exhibit which contains photostatic copies of an ap-

(Testimony of William E. Kyne.)

plication of cashier's check plus the cashier's check itself, the application being your application to the Bank of America to issue cashier's check to Haas Bros., and the date of the check is September 7, 1943, does that refresh your recollection?

A. I don't remember the exact date. The check should speak for itself.

Q. Well, the date that shows on here, you would not dispute it? A. That is right.

Q. As I understood your testimony, at some later time that same year, I believe in November, a check was issued by Haas Bros. which was cashed by some one other than yourself?

A. Will you repeat that again?

Q. I believe your testimony was that at some later time, in November of 1943, a check was issued by Haas Bros. in the same amount, 34 thousand odd dollars, and that check was endorsed and cashed by somebody other than yourself?

A. That is right.

Q. And you stated, I believe, when shown the exhibit—I show you prosecution's Exhibit 121A, Mr. Kyne, you were shown prosecution's [1076] Exhibit 121A, if I may show this to the witness, and look on the reverse side of the photostat of that check, and tell us whether or not that is your signature? A. That is not my signature.

Q. You were asked, I believe, whether or not you were acquainted with the handwriting following that endorsement and you said you were not?

A. That is correct.

(Testimony of William E. Kyne.)

Q. You did state, however, that Mr. Remmer had your power of attorney to sign your name, is that correct? A. Yes, sir.

Q. And you have Mr. Remmer's power of attorney, is that correct? A. Yes, sir.

Q. Now, at a subsequent time you did receive a check for \$17,739 and some odd cents, I believe 50 cents, from Barengo or the Sierra Wine Company, did you not? A. That is correct.

Q. And it came to your attention and knowledge that that was a refund from the money that had been put up for the whiskey, is that true?

A. That is correct.

Q. And that money, I believe you stated, you put into Box 48 and commingled it with the other funds in Box 48? A. Yes, sir.

Q. Mr. Kyne, you were asked some questions by Mr. Campbell regarding [1077] your individual 1943 returns, income tax returns, do you recall the questions? A. Yes, sir.

Q. Do you recall being shown your individual income tax return for the year 1943, in which you were credited with the entire profit and paid an income tax on the entire profit for that year of the Day-Night Cigar Stand? A. Yes, sir.

Q. Now that Cigar Stand at that time was a partnership, was it not? A. Yes, sir.

Q. Did you prepare your own individual income tax return, or did somebody else prepare it for you?

A. Slater.

Q. Do you know why Mr. Slater charged the

(Testimony of William E. Kyne.)

entire 1943 profits of the Day-Night Cigar Stand to you?

Mr. Campbell: Objected to as calling for his conclusion as to what Slater had in mind.

The Court: You may answer the question.

Q. I am asking you if you know why that was charged to you?

A. The liquor license was in my name.

Q. The liquor license of the Day-Night?

A. And I imagine he followed that out.

Mr. Campbell: I ask that go out.

The Court: It may go out. [1078]

Q. You can't imagine, Mr. Kyne. Do you know why Mr. Slater did that?

A. That would be the reason, he followed it out.

Q. At all events, Mr. Slater prepared it that way for you to sign, is that correct? A. Yes, sir.

Q. Of course you had informed Mr. Slater, and Mr. Slater having kept the books, knew that the Day-Night Cigar Stand was a partnership?

A. Yes, sir.

Q. He prepared the partnership returns, too, did he not, for the Day-Night Cigar Stand?

A. Yes, sir.

Q. Did the Internal Revenue Department ever come to you and say in effect, "The Day-Night Cigar Stand is a partnership; therefore all the partners should have paid tax on this income; therefore, you have overpaid, Mr. Kyne, and here is a refund"?

Mr. Campbell: I object to the question in that

(Testimony of William E. Kyne.)

form. Obviously a department cannot come to an individual. I think we are entitled to more precise questions. The Department of Internal Revenue is an intangible thing in itself.

Mr. Gillen: I will reframe the question.

Q. Did anybody from the Internal Revenue ever come to you and say in effect, "Mr. Kyne, you overpaid your income tax return on the Day-Night Cigar Stand; you should have only paid your [1079] partnership interest instead of paying all the tax due from that partnership, therefore, you have a refund and here is a refund," did anything like that ever happen? A. No, sir.

Q. They kept the money that you paid?

A. Yes, sir.

Q. And you did pay on the entire profits shown for the Day-Night Cigar Stand? A. Yes, sir.

Q. And that question was never raised by the Internal Revenue Department, is that correct?

A. No, sir.

Q. Now, with regard to the 110 Eddy establishment, I believe you stated in your direct examination that there was a Clarence Bent who was a partner in that? A. Yes, sir.

Q. And I believe you were asked by Mr. Campbell and stated that you had been charged for and had paid for two-thirds of the profits that were made by the 110 establishment for the year 1943?

A. Yes, sir.

Q. Now, I believe you testified that Mr. Bent died? A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Did Mr. Bent die during the year 1943?

A. I don't remember which year. I guess it was that year, '43 [1080] or '44.

Q. And who was it that prepared the partnership return for the 110 Eddy enterprise?

A. Slater.

Q. And who was it that prepared your individual partnership return for the year 1943, in which you were charged with and paid for two-thirds of the profit?

A. Slater.

Q. Did anybody from the Internal Revenue Department ever come to you since that time and say, "Mr. Kyne, you overpaid with regard to the profits of the 110 Eddy establishment. As a partner you should not have paid two-thirds, and therefore here is a refund for your overpayment"?

A. No, sir.

Q. Now, Mr. Kyne, as I recall your testimony, at the time you went into the United States army—and it has been referred to that you were in the army and navy, it was the army?

A. I was also in the Air Corps.

Q. Was that separate from the army at that time?

A. I was in the army.

Q. Now, you entered the service on February 14, 1945, is that correct?

A. Valentine's Day, yes, sir.

Q. And I believe you were transferred to Fayetteville, North Carolina? [1081]

A. North Carolina.

Q. At the time you went into service, the Menlo

(Testimony of William E. Kyne.)

Club was not an enterprise in which you or Mr. Remmer were interested? A. No, sir.

Q. That was acquired while you were away, is that correct? A. Yes, sir.

Q. If I remember correctly, the agreement will show that that was acquired on May 1, 1945?

A. I believe that's the month it was purchased.

Q. Because your agreement, which was written in November, was retroactive as of May 1, 1945?

A. Yes, sir.

Q. Now, at the time you left is it true that the only card room or social club in which you and Mr. Remmer were interested was the 186 Club?

A. That's correct.

Q. And at the time you left for the army, what did your records show with regard to credits in the form of markers, as they have been called here, but have been explained as IOUs from people owing to the 186 Club?

Mr. Campbell: Objected to as not the best evidence. The books themselves are the best evidence.

The Court: Objection sustained.

Q. Well, do you remember what was the condition of the 186 Club with regard to IOUs or markers? [1082]

Mr. Campbell: Same objection.

The Court: Same ruling.

Mr. Gillen: If I may be indulged a moment, I believe there is some testimony in regard to this in the direct examination.

Q. Mr. Kyne, do you have any independent

(Testimony of William E. Kyne.)

recollection of what was owed to the 186 Club by way of markers or IOUs left by people at the time you went in the army?

Mr. Campbell: The books and records are the best evidence.

The Court: Objection sustained.

Mr. Gillen: May I respectfully suggest, your Honor, he can testify to any recollection he has. He is the man who was the chief custodian in charge of these things. I think if he has any independent recollection on it, he should be permitted to state.

The Court: Well, I think the books and records are the best evidence.

Q. Well, Mr. Kyne, after you returned from the army in June of 1946, do you have any independent recollection of whether or not the markers or IOUs owing to the 186 Club were increased or decreased?

Mr. Campbell: Same objection, the records are the best evidence.

The Court: Same ruling.

Q. Mr. Kyne, you testified that you tended to the money matters [1083] and records that were turned over to you, that you in turn turned over to the bookkeepers or auditors in all the places in which you and Mr. Remmer were interested, is that correct? A. Yes, sir.

Q. And among your duties you enumerated that you went every day and picked up lists, picked up money, put the money where it should be. You also stated if one enterprise needed money, that

(Testimony of William E. Kyne.)

came out of a common fund from the enterprises to help the enterprise who needed it?

A. Yes, sir.

Q. Among your duties in connection with the various enterprises in which you and Mr. Remmer were interested, did you have anything to do with the good will and public relations of those enterprises towards customers? A. Yes, sir.

Q. Did you at Christmas time suggest what customers you thought should receive Christmas presents? A. Yes, sir.

Q. And do you know what was the usual Christmas present that was sent to customers by Mr. Remmer?

Mr. Campbell: Objected to as not within the scope of direct examination.

The Court: Objection will be sustained.

Mr. Gillen: May I respectfully say I think it is within the scope because counsel examined this witness as to his duties [1084] in direct examination and I think we encountered the same thing the other day with Mr. Lando and I think I am entitled to enlarge on cross-examination on those duties and find out if there were other duties to perform in addition to carrying money from one place to another or hiring bookkeepers. I asked him if he had anything to do with public relations and good will and he said yes. I think it would be perfectly proper to permit me to go into that.

The Court: The ruling will stand.

Mr. Gillen: May I respectfully offer to your

(Testimony of William E. Kyne.)

Honor when our explanation was given during the cross-examination of Mr. Lando, you did permit me to examine Mr. Lando on his recommendations as to who was to receive Sulka ties.

The Court: The ruling will stand.

Mr. Gillen: It isn't so——

The Court: The ruling will stand.

Mr. Gillen: Of course the ruling will stand, but I will say too for the record, it is——

The Court: The ruling will stand.

Mr. Gillen: This is another question, your Honor, in my mind and not in derogation of your Honor's ruling.

Q. Did you ever receive any presents of Sulka ties from Mr. Remmer? A. Yes, sir.

Q. More than one? [1085] A. Yes, sir.

Mr. Gillen: Now, I am going to ask another question, your Honor, which I do not believe is in derogation of your Honor's order.

Q. In the course of your duties in and about the Menlo Club and other various enterprises, did you at Christmas time participate in wrapping of any neckties to be given as presents to customers of the various enterprises?

Mr. Campbell: Objected to as not within the scope of direct examination.

The Court: I think you waived that. You had no objection to that last question. He testified here in response to a question, "Did you receive any presents" and you made no objection.

Mr. Campbell: That is a different situation, if

(Testimony of William E. Kyne.)

the Court please, than called for in this question presently propounded.

The Court: It seems to me it wasn't embraced within direct examination. I will overrule the objection.

Q. His Honor says you may answer the question. A. I did wrap ties at Christmas.

Q. Were they Sulka ties? A. Yes, sir.

Q. Mr. Kyne, you were asked with regard to bank accounts, or your knowledge of bank accounts, that Mr. Remmer had and you [1086] stated, I believe, that Mr. Remmer had a bank account, in which you had no interest, in Tracy, California?

A. That's correct.

Q. And that was approximately 90 miles from San Francisco? A. Yes, sir.

Q. And it is true, is it not, that Mr. Remmer at one time owned a restaurant and tavern business in Tracy, California, is that correct?

A. I believe it was a tavern.

Q. And it is within your knowledge, is it not, that that personal bank account at Tracy was in existence for many years? A. Yes, sir.

Q. Now, I may be in error about this, Mr. Kyne, but I believe when Mr. Campbell was examining you concerning the Haas Bros. check for \$34,608, he asked you—I will withdraw that. I think what is correct is Mr. Campbell showed you the check of November, 1943, November 4th, I believe it is, 1943, the Haas Bros. check.

(Testimony of William E. Kyne.)

The Court: Would you mind referring to the exhibit number if there is one?

Q. I am referring now to prosecution's Exhibit 121A for identification. I believe Mr. Campbell, when he showed you the Haas Bros. check, refunding \$34,608, which you said was endorsed by some one other than yourself, asked you if you recalled seeing that check at his office in May of 1950. Do you remember [1087] that? A. Yes, sir.

Q. Now, you were interviewed by Mr. Campbell in May of 1950, were you? A. Yes, sir.

Q. And during the course of that interview with Mr. Campbell, did you explain to Mr. Campbell what was meant by the working agreements you had in the various enterprises with Mr. Remmer, including the 15 per cent working agreement that you had in the profits of the Menlo Club?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Mr. Gillen: Well, I would like to be heard on that, may it please the Court. I think it is a very vital part of the defense's case and I think the defense counsel should have an opportunity to present it to your Honor out of the presence of the jury.

The Court: We will excuse the jury.

(Jury admonished and excused at 10:30.)

(In the absence of the jury.)

(NB 326 pp. 35 to 52.)

11:15 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. KYNE

resumes the witness stand on [1088]

Cross-Examination

By Mr. Gillen:

Mr. Gillen: Your Honor sustained the objection of counsel to the last question. I am going to ask some other questions touching the same subject matter. Those questions are not now in disobedience to your Honor's ruling, but will be questions I deem perfectly proper. If they are objected to, of course——

The Court: I would like to ask counsel a question. Isn't it a rule when an objection to a question is sustained, that the matter should not be pursued further?

Mr. Gillen: I do not think so, your Honor. I think the question should not be pursued further, of course.

The Court: Well, the same subject matter. I had in mind a situation where counsel might, in the face of an objection sustained, might change the appearance——

Mr. Gillen: I will be glad to tell your Honor what I intend to do. It is my understanding that in cross-examination the cross-examiner is entitled to ask the witness this question, by either side,

(Testimony of William E. Kyne.)

whether or not he ever discussed his testimony with the prosecution, with the particular attorney who examines him, and questions pertaining to what was discussed. I think that is perfectly proper cross-examination.

Mr. Campbell: That is not our understanding, if the Court please. [1089]

The Court: Let us proceed. We will have the question read.

(Last question before jury was excused read.)

The Court: Objection was sustained to that.

Mr. Gillen: I am going to ask another question.

Mr. Pike: Your Honor, if I may comment, in view of counsel's statement. I will say this, that it is my understanding likewise that it is in order to ask a witness called by opposite parties who they have discussed their testimony with, but the record in this present instance shows that Mr. Kyne has discussed matters with Mr. Campbell and that matter has already been gone into and I respectfully suggest if there are other questions seeking to elaborate on that discussion, further discussion should take place in the absence of the jury.

Mr. Gillen: Counsel is saying now because—

The Court: Well, we will excuse the jury again until one o'clock this afternoon.

(Jury and alternate jurors admonished and excused at 11:20.)

(Argument in the absence of the jury.)

(NB 326 pp. 53-63.)

(Court recessed at 11:45 a.m.)

December 19, 1951, 1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.) [1090]

MR. KYNE

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Kyne, you were interviewed by Mr. Campbell in May of 1950 concerning the matters pertaining to the income tax and the business affiliations with relation to Mr. Remmer?

Mr. Campbell: Objected to as immaterial and incompetent.

The Court: Objection sustained. This question has already been answered.

Mr. Gillen: I was not aware of that, your Honor. I will ask another question, contemplating it is already in the record and he so testified.

Q. Did your interview with Mr. Campbell consist of meeting one day or more than one day?

Mr. Campbell: Objected to as immaterial.

The Court: Objection sustained.

Q. Who was present beside Mr. Campbell during the course of the interview?

Mr. Campbell: Same objection.

The Court: Objection sustained.

Mr. Gillen: May I say respectfully, your Honor, I believe where there is evidence of a meeting or

(Testimony of William E. Kyne.)

conversation between people that it is perfectly proper to ask who else was present at the meeting.

The Court: Due to the peculiar situation we have here, the ruling will stand. [1091]

Q. At the interview with Mr. Campbell in May, 1950, did you relate to Mr. Campbell approximately what you related on cross-examination here and nothing different than what you related under cross-examination here, with regard to Mr. Remmer's affairs, as you knew Mr. Remmer's affairs?

Mr. Campbell: Objected to as incompetent, calling for his conclusion and immaterial.

The Court: Objection sustained. I wish you would not pursue the subject any farther.

Mr. Gillen: May I make one observation to your Honor in connection with your Honor's ruling?

The Court: I would rather not.

Mr. Gillen: If your Honor tells me to desist, I will desist.

The Court: I would rather not.

Q. Now, Mr. Kyne, is it your testimony that in all of the six enterprises in which you were interested with Mr. Remmer, that you attended to the management of those enterprises, the handling of the money, the handling of the records, the engaging of the bookkeepers and auditors?

A. I handled the money and sheets and hired the bookkeepers except for Mr. Maundrell.

Q. Now, there was also for the Menlo Club a public accountant by the name of Ayton, was there not?

A. That is correct. [1092]

(Testimony of William E. Kyne.)

Q. And you did not engage Mr. Ayton, did you? A. No, sir.

Q. Mr. Ayton was a man who had for some ten years prior to Mr. Remmer's acquiring an interest in the Menlo Club, kept the books and records for the predecessors of Mr. Remmer, is that correct?

A. That is correct.

Q. And one more thing, Mr. Kyne—oh, and in regard to Mr. Ayton, he was just kept on because he was familiar with the books and records?

A. Yes, sir.

Q. One more thing, Mr. Kyne—you stated in your direct examination, and I believe you testified on cross, that in regard to the 186 Club, that an Internal Revenue agent directed that the 186 Club make a return as a corporation rather than as a partnership the first year it was in operation, is that correct?

A. We made a partnership return the first year.

Q. Now, that Revenue agent was a Mr. Mooser, was he not? A. Yes, sir.

Q. Let me ask you whether or not you recall that Mr. Mooser visited the 186 Club and remained there for some length of time making observations of the average business that was done?

A. He was there about a month.

Q. Did he prepare what he considered the average business of the club from his personal observations carried on there for a [1093] period of a month?

Mr. Campbell: Objected to as calling for this

(Testimony of William E. Kyne.)

witness' conclusion as to Mr. Mooser's conclusion.

The Court: Objection sustained.

Q. I understand you to say that Mr. Mooser stayed at the club there for the period of a month?

A. About a month.

Q. Did he tell you what he was doing there?

A. He had our sheets and records, more or less wanted to verify them.

Q. Did he tell you how he was verifying them?

A. Yes, sir.

Q. What did he tell you in that regard?

A. By his own observation.

Q. That is, he was observing the amount of business done there? A. Yes, sir.

Q. And checking that against your records?

A. That's right.

Q. And did he present to you what he stated was his conclusion regarding the average business at the 186 Club over that period of time?

A. He presented that information to our attorney, John Taffe.

Q. And that is Mr. John Taffe, who is now deceased? A. Yes.

Q. Now, Mr. Kyne, I am going to show you defendant's Exhibit [1094] "Q" in evidence, which purports to be corporation interest profits tax return for the 186 Club for the fiscal period beginning July 1, 1942, and ending June 30, 1943, and I will ask you to look at the signature of the deputy collector at the bottom of that page and tell us if that is the same Mr. Mooser who spent a month at the

(Testimony of William E. Kyne.)

186 Club getting an average of the business?

A. Yes, sir.

Q. And is that the fiscal year that Mr. Mooser had you change your returns from a partnership return to a corporation return?

A. That is correct.

Q. Now, as a matter of fact, Mr. Kyne, the 186 Club had already filed a full year's return, had it not, for the year 1943, as partnership, had it not?

A. That's correct.

Q. So that, as a matter of fact, the 186 Club at that time had paid an income tax as a partnership for the full year of 1943 and then when Mr. Mooser made the change, they paid double for part of the year 1943, is that true?

Mr. Campbell: Objected to as assuming a fact not in evidence; further, that a partnership, as such, does not pay an income tax.

The Court: I take that as a question. The witness may answer the question. [1095]

A. That is correct.

Q. In other words, the partners paid for the full year 1943 on a partnership basis?

A. As a partnership and a corporation.

Q. Partnership basis first, isn't that correct?

A. Yes.

Q. And then Mr. Mooser, after he had completed his survey and had a corporation return made, you paid for at least six months of the same year as a corporation, isn't that true?

A. Yes.

(Testimony of William E. Kyne.)

Q. Were the partners ever given any refund for the double payment? A. No, sir.

Q. Now, I am going to show you the prosecution's Exhibit 87A, which is the corporation return of the 186 Club for the fiscal year beginning July 1, 1943, and ending June 30, 1944, and ask you if you will notice that the deputy collector's name signed there is Louis Mooser. Is that the same Louis Mooser whom you have been referring to here as having made a survey? A. Yes, sir.

Q. Now, in this last exhibit that I showed you, prosecutor's Exhibit 87A, covering the period of fiscal year commencing July 1, 1943, and ending June 30, 1944, it is true, is it not, that the partners, having previously paid for the entire year of 1943 as a partnership, that on the next year's fiscal year's [1096] return of the corporation, there had been double payment of tax under this corporation return prepared by Mr. Mooser, isn't that true?

A. That's right.

Mr. Campbell: Objected to as unintelligible.

The Court: The answer may stand.

Q. Did you, or any of the partners, to your knowledge, get a refund from the Internal Revenue for the second half of the year that you paid taxes as partners and later on paid taxes for the same period as a corporation? A. No, sir.

Mr. Gillen: I think that is all.

(Testimony of William E. Kyne.)

Redirect Examination

By Mr. Kyne:

Q. Mr. Kyne, in response to one of Mr. Gillen's questions, regarding the bank account at Tracy, you stated that Mr. Remmer owned a tavern at Tracy?

A. That is correct.

Q. What was the name of that tavern?

A. That I don't know.

Q. Over what period of time did he own it?

A. I don't know.

Q. Do you know whether or not he owned that tavern during any part of the years 1944 to 1946?

A. Not during those years. [1097]

Q. Do you know that definitely?

A. Well, I couldn't swear to it.

Q. Do you know where the tavern was located?

A. No, I do not.

Q. Have you ever been in the tavern?

A. No, sir.

Q. Can you state whether or not, to your knowledge, Mr. Remmer had any partners or associated in that tavern business in Tracy?

A. I know the gentleman that purchased it from him.

Q. What was his name?

A. Frank Cavani.

Q. I believe you testified, in response to Mr. Gillen's questions, that you were sort of a general manager of the six San Francisco enterprises?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. And that you handled the money and the sheets, is that correct? A. Yes, sir.

Q. Exactly to what do you refer when you state the sheets you handled?

A. Reports, card reports.

Q. Were those sheets similar to sheets shown to you as the Poker sheets of the Menlo and 186 Club?

A. Yes, sir.

Q. And you did handle those sheets how [1098] often?

A. Each day I would deliver them to 50 Mason Street.

Q. How did they come into your possession, Mr. Kyne?

Mr. Gillen: Objected to as already asked and answered quite fully on direct examination. He went each day and picked up at the two card rooms and placed them in a large box and delivered them to 50 Mason Street.

The Court: I think that is true. Objection sustained.

Q. Now, in response to question Mr. Gillen asked you whether or not any money was kept in the box at the Crocker Bank, safety deposit box, which was in the joint name of yourself and Mr. Remmer, under the name of Henry Clay, you answered that no money was kept there, was that correct?

A. I don't think so.

Q. What is your best recollection?

A. I mean in regard to the money being left there.

(Testimony of William E. Kyne.)

Q. Was there any money left in that box?

A. No, I don't think so. The records will show. I just went in there a few days in the course of a few months.

Q. What was kept in there?

A. Oh, I think I had some records in there.

Q. Records of what?

A. Just papers accumulated.

Q. Did those refer to the six businesses as to which you have been interrogated?

A. No, it would have been my own sheets. [1099]

Q. Relating to personal business of your own?

A. Yes, sir.

Q. Do you recall whether or not there were kept in there any of the records pertaining to the six businesses?

A. That I don't remember.

Q. You stated that money was kept in Box 48. Did you keep any record as to the source of the money which you placed in Box 48?

A. Yes, sir.

Q. And what was the nature of that record?

A. Just a daily record.

Q. Do you have that record now?

A. No, sir.

Q. Do you know where that record is?

A. Slater had it.

Q. Is that the last you saw of it?

A. Yes, sir.

Q. Slater is the gentleman who is now deceased, is that correct?

A. Correct.

Q. Do you recall when Slater died?

(Testimony of William E. Kyne.)

A. No, I don't.

Q. Was that a record which he kept or which you kept?

A. That I kept and turned over to him.

Q. How often did you turn it over to him? [1100]

A. Oh, maybe once a month.

Q. That was the information from which he kept a record?

A. So that he could file the taxes.

Q. Now, you testified, Mr. Kyne, in response to questions by Mr. Gillen, that each year you supplied Mr. Mooney with certain figures for use in preparing Mr. Remmer's individual income tax returns, is that correct?

A. That is correct.

Q. Where did you obtain the figures which you supplied Mr. Mooney with?

A. I believe I supplied figures for the B & R Smoke Shoppe and Mr. Slater gave me the rest of the figures.

Q. Gave you the rest of the figures?

A. Yes.

Q. And you in turn turned them over to Mr. Mooney?

A. Yes, sir.

Q. What records of the B & R Smoke Shoppe did you refer to for the purpose of determining Mr. Remmer's share of the income?

A. My own record.

Q. Was that a record other than the daily diaries which have been produced here?

A. No, sir.

Q. Then did you refer to the daily diaries?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Let us take the first one, and I refer to the year 1945, [1101] government's Exhibit 111B, and will you state to what figure you referred in supplying the information to Mr. Mooney relative to Mr. Remmer's profit or loss from that enterprise for that year?

A. I wasn't here at that time.

Q. Did you supply any information to Mr. Mooney then in relation to Mr. Remmer's 1945 income tax?

Mr. Gillen: I think it is well established in direct examination and cross-examination—in fact, counsel reminded me yesterday when I looked at the 1945 record—there was only one record in 1945, and Mr. Kyne, you may recall, went in the army and was there for the balance of the year 1945.

Mr. Campbell: That is exactly what I am attempting to bring out, but the witness stated on cross-examination that he supplied information for each year.

Mr. Gillen: Your Honor will recall I eliminated in my cross the year 1945 when I asked the question concerning the supplying to Mr. Mooney, I said with the exception of 1945 and 1946 that you were away; so this would not be proper redirect examination.

(Question read.)

The Court: Answer the question.

A. I was away at that time.

Q. Would you answer the question yes or no?

(Testimony of William E. Kyne.)

A. Slater would take care of it. [1102]

Q. That is not directly in response to my question, Mr. Kyne. I asked you if you supplied any information for 1945? A. The answer is no.

Q. Now, in relation to the year 1946—and I am referring to government's Exhibit 111C which you identified the other day—will you show me the source of the figure which you used in supplying information to Mr. Mooney?

A. I would have to have my income tax report in that connection.

Q. Mr. Kyne, was that supplied from that record which you hold in your hand? A. Yes, sir.

Q. Then can you point out to me the source of the information?

A. I still have to see the income tax return.

Q. Your personal income tax return?

A. For the B & R Smoke Shoppe.

Q. I will show you that if that will refresh your recollection. May we have plaintiff's Exhibit 79. I hand you plaintiff's Exhibit 79, 1946 partnership return of the B & R Smoke Shoppe, which you requested for the purpose of refreshing your recollection.

A. I believe that was a losing year.

Q. Does that refresh your recollection where in this record, 111C, you obtained the information?

A. No, it doesn't.

Q. It does not? [1103] A. It does not.

Q. Now, did you supply Mr. Mooney with any

(Testimony of William E. Kyne.)

information relative to the 21 Club, the San Diego Social Club, or the 311 Club?

A. I may have through Mr. Simmons.

Q. What is your best recollection, Mr. Kyne?

A. I believe I did call on Mr. Simmons to find out figures for Mr. Mooney.

Q. Did you supply that information to Mr. Mooney? A. I think so, yes, sir.

Q. Will you state at this time for what calendar years did you supply figures to Mr. Mooney for preparation of Mr. Remmer's returns?

Mr. Gillen: Objected to as asked and answered. Already in the record he said he believed from 1942.

The Court: I believe that is correct, Mr. Campbell.

Mr. Campbell: Very well. May I have exhibits 1 to 10 inclusive?

Q. I am going to show you government's Exhibit 1, the individual return of Elmer Remmer for the year 1944, and ask you to examine it and state whether or not you supplied Mr. Mooney with any figures set forth thereon?

A. I believe I was away at that time, Mr. Campbell.

Q. What is your best recollection then as to whether or not you supplied Mr. Mooney with any figures relative to the preparation of the 1944 return? [1104]

A. Those figures were supplied by Slater.

Q. Did you furnish any? A. No, sir.

Q. I show you government's Exhibit 3, being the

(Testimony of William E. Kyne.)

income tax return of Mr. Remmer for the calendar year 1945, and ask you if you supplied any of the figures set forth on that return to Mr. Mooney?

A. I believe I did.

Q. Will you state what figures you supplied? Will you identify the ones which you supplied?

A. This six thousand, I believe.

Mr. Campbell: The witness has indicated figures six thousand dollars which appear opposite line 7, "How much have you paid on your 1945 income tax by payments on 1945 declaration estimated tax, \$6,000."

Q. Is that the figure to which you return?

A. Yes.

Q. Do you see any other figures which you supplied?

Mr. Gillen: I should offer the objection that this particular subject matter was introduced and established by the government in the testimony of Mr. Mooney, the government witness, with regard to this particular return. If your Honor will recall, Mr. Mooney testified that there was a return made on estimated figure and subsequently there was some correspondence passed between Mr. Mooney and persons from whom he was seeking [1105] additional information to make an amended return, and if your Honor will recall, there was also a letter written by Mr. Mooney to Mr. Remmer, an exhibit here, in which he said, "I will have to file return on the estimated figure and have to get the additional information to make an amended re-

(Testimony of William E. Kyne.)

turn." I believe those are exhibits here and brought out by and introduced by the government on Mr. Mooney's testimony.

The Court: Objection overruled.

A. The figure I am referring to isn't even listed here under the income sheet.

Q. Do you recognize any figures on that return which you supplied to Mr. Mooney?

A. No, sir.

Q. I call your attention to government's Exhibit 5, being the individual income tax return of Elmer F. Remmer for the year 1946, calling your attention to not only the return itself, but to the attached schedule of income deductions, and ask if you recognize any of the figures thereon as having been supplied by you to Mr. Mooney?

A. B & R Smoke Shoppe, \$1,300.

Q. Is that the only figure which you recognize?

A. The rest of the figures were given to me by the bookkeepers and then transferred to Mr. Mooney.

Q. Do you recognize the other figures as being figures which you transferred or transmitted to Mr. Mooney? [1106]

A. I think the books would show that.

Mr. Gillen: I offer the objection it is improper redirect examination and is cross-examining his own witness. He said he supplied figures personally from the B & R and the other figures he obtained from Mr. Slater, the bookkeeper, as to other items.

Mr. Campbell: The witness on cross-examination

(Testimony of William E. Kyne.)

was asked the general question and answered he supplied information for all the years 1942 to 1946 and I am simply examining as to years.

Mr. Gillen: That isn't a correct statement. The year Mr. Kyne was away was eliminated of course—"with the exception of the time you were in the service."

The Court: Objection overruled.

(Question and answer read.)

The Court: The answer may stand.

Q. Now, in response to counsel's questions, you stated, Mr. Kyne, that you made investment in the Transit Smoke Shop of \$16,005.50, do you recall that? A. Yes, sir.

Q. From what source was it that you obtained those funds? A. Menlo Club.

Q. Do you know whether or not that amount was charged against you on the books of the Menlo Club? A. I don't remember. [1107]

Q. In what manner did you receive the money from the Menlo Club, that is, as payment to you of what is due, in loan or in what manner?

A. It reads as a loan, the check.

Q. That is, the check which you identified when you were on the stand here as "Loan Transit Smoke Shop," is that correct? A. Yes, sir.

Q. Were you familiar with the entries which were made on the books in that regard?

A. No, I was not.

Q. And you say that 16 thousand dollars was

(Testimony of William E. Kyne.)

subsequently used as however necessary, I believe in the conduct of the various businesses?

A. That is correct.

Q. Now, in response to counsel's questions regarding the B & R Smoke Shoppe, you stated that Mr. Remmer got his bank roll back. Do you recall that testimony? A. I believe that is correct.

Q. Do you know that to be the fact?

A. I don't remember.

Q. You don't know whether he did or not get it back? A. No, sir, it is too far back.

Q. Was any entry made of these records as a repayment to Mr. Remmer?

A. That I don't remember.

Q. Would an examination of these records refresh your recollection? [1108]

A. I don't believe so.

Q. Now, you stated at the suggestion of a Mr. Mooser, the 186 Club, which had been started as a partnership, became a corporation, is that correct?

A. Yes, sir.

Q. Do you recall at that time what, if anything, Mr. Mooser told you about the necessity for a charter for a social club?

A. The meetings took place between John Taffe, Bob Slater and Mooser in Mr. Taffe's office. They argued there for three months before Mr. Mooser won out and set up as a corporation.

Q. A corporation was organized?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. Who, incidentally, handled the legal aspects of setting up that corporation?

A. I believe Taffe handled it. I am not sure.

Q. Now, yesterday, I believe that you did not know whether or not records were kept, books and records, for the 186 Club?

A. What is that question again?

Q. You stated, I believe, that you did not recall whether or not books or records were kept on the 186 Club?

A. We had the sheets.

Q. Did you have other books and records that you recall?

A. We had social security. I don't believe so.

Mr. Campbell: I am going to ask that this document be [1109] marked for identification.

The Clerk: 122.

Q. Mr. Kyne, I show you government's Exhibit 122 for identification and ask you if you recognize the signature on that exhibit?

A. Yes, sir.

Q. You are familiar with that signature?

A. Yes, sir.

Q. Whose signature is that?

A. Harold Maundrell.

Q. Is that the same Maundrell as you have referred to as keeping books and records for the various enterprises?

A. Yes, sir.

Q. Will you examine this—

Mr. Gillen: I think counsel made a mistake—books and records, I don't think that is a fact.

Mr. Campbell: That question may be stricken.

Q. Is that the same Mr. Maundrell that you have

(Testimony of William E. Kyne.)

referred to in your testimony? A. Yes, sir.

Q. Will you examine that document and state whether or not that refreshes your recollection as to whether or not books and records were maintained for the 186 Club? A. Yes, sir.

Q. And what is your recollection as [1110] refreshed?

A. We have to keep some books.

Q. As to whether books and records were maintained for the 186 Club?

A. They were, but I didn't keep them.

Q. Do you know who did keep those records?

A. I believe Slater at first and then Maundrell.

Q. Now, in response to Mr. Gillen's questions, Mr. Kyne, you stated that Clarence Bent, who at one time was associated in the 110 Eddy Street bar, died in 1943 or 1944, do you recollect that testimony? A. Yes, sir.

Q. Now, do you know whether or not, at the time of his death, anything was paid out of 110 Eddy Street to his estate or to any one else regarding any share which he may have had in that business?

A. I believe John Taffe paid his sister \$3,500.

Q. What is your best recollection?

A. I am pretty sure that was the amount.

Q. How was that paid, if you recall, by check or by cash?

A. I think it was a cashier's check; I am not sure.

Q. Who purchased it? A. I made it up.

Q. Where did you receive the money?

(Testimony of William E. Kyne.)

A. Took it out of Box 48.

Q. Were you given instructions by any one to pay that money? [1111]

A. John Taffe.

Q. Mr. Kyne, you stated on cross-examination that Mr. Remmer held your power of attorney?

A. Yes, sir.

Q. And when was it that you gave him your power of attorney?

A. I don't remember.

Q. What is your best recollection?

A. I don't remember.

Q. Does he still have your power of attorney?

A. No, sir.

Q. When did you receive it back?

A. I forget exactly.

Q. What is your best recollection, Mr. Kyne?

A. I just don't remember.

Q. Can you state whether or not Mr. Remmer held your power of attorney during the years 1944 to 1946 inclusive?

A. I don't remember.

Q. Do you recall whether or not Mr. Remmer held your power of attorney in the year 1943?

A. I don't remember.

Q. Was that a written power of attorney?

A. I forget.

Q. What is your best recollection?

A. I just don't remember.

Q. Now, you testified also, in response to Mr. Gillen's questions [1112] that you held power of attorney for Mr. Remmer, do you recall that testimony?

A. Yes, sir.

(Testimony of William E. Kyne.)

Q. And was that a written or oral power of attorney? A. That I don't remember.

Q. When did you receive that power of attorney? A. I don't remember.

Q. Do you still hold that power of attorney?

A. No, I don't believe so.

Q. When was the power of attorney cancelled?

A. I don't remember.

Mr. Gillen: Of course, that is assuming it was cancelled, may it please the Court. We move the answer be stricken for that reason. Also offer the objection this examination is not proper redirect examination but more in the nature of cross-examination of his own witness.

The Court: Objection overruled. Motion to strike is denied.

Q. Can you state whether or not you held Mr. Remmer's power of attorney during the years 1943 to 1946 inclusive?

Mr. Gillen: Objected to as already asked and answered. He says he doesn't recall.

The Court: Objection overruled.

A. I don't remember.

Q. Do you recall now that you were shown by counsel the check [1113] of Haas Brothers and attention was directed to testimony that that was not your signature endorsing that check, in 1943, and you stated that Mr. Remmer had your power of attorney at that time, does that refresh your recollection as to whether or not Mr. Remmer had your power of attorney in 1943?

(Testimony of William E. Kyne.)

A. I believe that is right.

Q. That he did have your power of attorney in 1943?

A. I believe that is right. I don't exactly remember.

Mr. Gillen: I will state to your Honor, we have been looking for some powers of attorney and this might assist counsel in his redirect.

The Court: Show it to counsel.

Mr. Gillen: I believe there was special power of attorney given when Mr. Kyne went into the service. I believe there is an earlier one than that, which we may be able to find; that is, power of attorney from Mr. Remmer to Mr. Kyne.

Mr. Campbell: Counsel has produced and with his permission——

Mr. Gillen: We are happy to have you make any use of it you wish.

Q. I show you, Mr. Kyne, a document bearing date February 13, 1945, and ask you if you recognize the signatures thereon? A. Yes, sir.

Q. Is that your signature appearing on it?

A. Yes, sir. [1114]

Q. And is that the signature of Elmer Remmer?

A. Yes, sir.

Mr. Campbell: May this be marked in evidence as government's Exhibit 123.

The Court: Any objection to the admission of that document in evidence?

(Testimony of William E. Kyne.)

Mr. Gillen: No, your Honor, we produced it for counsel to make whatever use he wanted to.

The Court: It may be admitted.

Mr. Campbell: Reading this document, with the Court's permission; dated San Francisco, California, February 13, 1945: (Reads Exhibit 123.)

Q. Now, is this the power of attorney which you referred to when you stated that Mr. Remmer had your power of attorney?

A. I believe that is it.

Q. Prior to that time had you executed any power of attorney for Mr. Remmer?

A. I do not remember.

Q. Now, simultaneously, or at or about the date of that document, had Mr. Remmer executed a power of attorney to you, if that refreshes your recollection?

A. I am pretty sure that was the power of attorney.

Q. Yes, but can you state, or can you fix in any way, or is there anything that refreshes your recollection, as to when you received that power of attorney, if it was in written form, and [1115] how long you had his power of attorney?

A. I think the Bank of America has a sheet similar to this one here pertaining to the fact that I had power of attorney, but I am not sure.

Q. Do you recall the wording of that power of attorney? A. No, I do not.

Mr. Gillen: Of course, the power of attorney would be the best evidence.

(Testimony of William E. Kyne.)

The Court: He has answered the question, he doesn't know.

Q. After you returned from the service, Mr. Kyne, do you recall whether or not you executed another power of attorney to Mr. Remmer?

A. No, I don't.

Q. Now, Mr. Kyne, Mr. Gillen questioned you regarding operations of the B & R Smoke Shoppe and particularly as to the acceptance of lay-off bets, do you recall that?

A. Yes, sir.

Q. I believe you were asked if all of the cashier's checks set forth in plaintiff's Exhibit 116, represented what were known as courtesy bets. Do you recall that?

Mr. Gillen: I do not believe I asked the question. I do not believe that question was asked.

Mr. Campbell: That is the note I have.

Mr. Gillen: I would refer to the record. I would [1116] challenge that.

The Court: May we have the question.

(Question read.)

The Court: Do you want to refer to the record?

Mr. Gillen: Yes, I would like to.

Mr. Campbell: I will reframe my question in a way I do not think will be objectionable.

The Court: The question is withdrawn.

Mr. Gillen: Very well.

Q. Mr. Kyne, referring to plaintiff's Exhibit 116, which you have previously identified as representing cashier's checks purchased from the Bank

(Testimony of William E. Kyne.)

of America, do you recall that? A. Yes, sir.

Q. Were those purchased in connection with the B & R Smoke Shoppe operation? A. Yes, sir.

Q. Now, you were asked, I believe, by Mr. Gillen regarding what is known as courtesy bets, do you recall that? A. Yes, sir.

Q. And I believe you described a courtesy bet as one where another bookmaker would ask you if you could place money with other people, is that correct? A. That is correct.

Q. Now, do all of those cashier's checks set forth there represent what you term courtesy [1117] bets?

Mr. Gillen: I am going to offer the objection that this has been asked and answered in the record in both direct and cross-examination. I have a distinct recollection that Mr. Kyne was asked if lay-off business was done with cashier's checks and he said they usually paid with cashier's checks, with the exception on occasion somebody might come in and take cash. There was nothing said in either direct or cross-examination as to whether or not all of these checks represented courtesy lay-offs.

The Court: You may answer the question. Objection overruled.

Q. Do you have the question in mind, Mr. Kyne?

A. Yes, the cashier check to P. G. & E., Castro Floral Shop, and so on.

Q. Also cashier's checks, I believe, to the Collector of Internal Revenue? A. Yes, sir.

Q. Let us refer to some of these other checks.

(Testimony of William E. Kyne.)

Taking the first page, which reads January, 1943—

Mr. Gillen: May I respectfully interrupt and say this is improper redirect examination. I did not go into details on cross-examination of what the checks represented. I simply asked for an over all description.

The Court: I can't very well rule until I hear the question. There has been no question propounded. [1118]

Mr. Campbell: I hadn't finished my question.

Mr. Gillen: I am sorry. I withdraw the objection.

Q. Taking the first page, which reads January, 1943, and the item on January 2, 1943, purchaser William E. Kyne, payee Gus Greenbaum, amount \$2,180. Now, who is Gus Greenbaum?

Mr. Gillen: Just a moment. May it please the Court, I offer the objection, first of all that refers to a transaction in 1943, which is a year prior to the commencement of the time bracket of this indictment, which is from 1944 to 1946, inclusive. That is my first objection. My second objection is that I did not cross-examine Mr. Kyne regarding any 1943 checks, cashier checks, to whom they went or for what. My third objection is, may it please the court, that it is improper redirect examination, for the reason I did not cross-examine Mr. Kyne on who any check was made payable to, and if your Honor will recall, I base my objection on this, that my only reference to cashier's checks was that in these particular lay-off transactions Mr. Kyne tes-

(Testimony of William E. Kyne.)

tified that they were usually handled by cashier's checks. I did not go into that at all and the record will bear me out, I am certain.

Mr. Campbell: Here is the record, your Honor, reading from page 1063 of the transcript: (Reads.) It is to that cross-examination to which I am directing questions.

Mr. Gillen: I submit, your Honor, there is no reference made to prosecution's Exhibit 116 or any reference made to any [1119] check in my cross-examination and this is improper redirect examination upon all the grounds I have stated, and it is incompetent, irrelevant and immaterial because it is a year prior to the commencement point of this indictment. I recall your Honor distinctly admonished the jury we are trying it for the years 1944, 1945, and 1946. We are not concerned with anything else.

The Court: The objection is overruled. He may answer the question.

(Question read.)

Mr. Gillen: We offer the objection it is incompetent, irrelevant and immaterial who Mr. Gus Greenbaum is.

The Court: Objection overruled. Answer the question.

Mr. Gillen: May I respectfully ask that your Honor hear me on that out of the presence of the jury?

The Court: Yes, very well.

(Jury and alternate jurors admonished and excused and recess taken for 15 minutes, at 2:10 p.m.)

2:25 P.M.

(Defendant present with counsel.)

(Argument in absence of the jury.)

(NB 326 p. 84 to p. 98.)

3:07 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate juror stipulated.) [1120]

MR. KYNE

resumes the witness stand on further

Redirect Examination

By Mr. Campbell:

Q. Mr. Kyne, coming back to the matter of these courtesy bets, I believe you testified that in certain instances and from other bookmakers you received bets simply for the purpose of passing them on to other bookmakers, is that correct?

A. Yes, sir.

Q. Now, will you state whether or not under such circumstances you received a commission?

A. No, sir, aside from that one instance.

Q. Aside from the California Jockey?

A. Aside from the California Jockey.

Q. Now, as a part of your business there at the

(Testimony of William E. Kyne.)

B & R Smoke Shoppe, will you state whether or not you also received from other bookmakers bets which you accepted for the B & R Smoke Shoppe?

A. Yes, sir.

Q. And in connection with that part of your business were such accepted from bookmakers operating at points outside of San Francisco?

A. Yes, sir.

Q. And from points throughout the United States?

A. Yes, sir.

Q. And in making settlement with those out-of-town bookmakers, I believe you testified that you either used cashier's checks [1121] or cash, depending on whether any bookmaker or his representative happened to be passing through San Francisco, is that correct?

A. That is correct.

Q. Now, in the event of those bets which you accepted for the B & R Smoke Shoppe from bookmakers outside of San Francisco and upon which you won, how would you receive your winnings?

A. Usually a cashier's check or own personal check.

Q. And in some cases would you receive some cash?

A. Once in a while, yes, sir.

Q. Now, I am going to show you plaintiff's Exhibit 116, which you have previously identified as a list of cashier's checks which was drawn up for you by an employee of the Bank of America at your request, as cashier's checks purchased during the years 1943 to 1946, inclusive, and I will ask if you will indicate on this exhibit by a mark opposite

(Testimony of William E. Kyne.)

the amount —I direct your attention to the fact that there are four columns on these pages headed, "Date," "Purchaser," "Payee," and "Amount." The date refers to date of the purchase of the check, does it not? A. Yes.

Q. And by purchaser there is set forth the name of the person who bought the check; is that correct?

A. Yes, sir.

Q. In most instances, I believe, yourself?

A. Yes, sir. [1122]

Q. Although in some instances by Mr. Pritchett, whom you have identified as an employee of B & R Smoke Shoppe? A. Yes, sir.

Q. There then follows the payee and underneath that is set forth a series of names and those, I presume, are the people in whose favor the particular check was drawn? A. Yes, sir.

Q. And under the heading "Amount," the amount of the cashier's check? A. Yes, sir.

Q. Now will you indicate by whatever mark you choose, an "X" mark, I presume, opposite the amount, any of these transactions which you can now recall represented a courtesy transaction, where you passed the bet on to someone else?

Mr. Gillen: May I make this suggestion, whatever transactions Mr. Kyne might recognize there, if it is a courtesy transaction he could mark with a "C"; any loss he could mark with an "L."

Mr. Campbell: I have no objection to his using "C" for courtesy transactions. At this time I ask he now mark those he now recalls as courtesy

(Testimony of William E. Kyne.)

transactions, that is, transactions where he simply acted as transit agent for the money, placing the bet with someone else. Will you do so, Mr. Kyne?

A. The majority of these bets are lay-off bets. It would *be impossibility* to take out courtesy bets, the ones that went [1123] to the place.

Q. When you say lay-off bets, do you mean bets which you laid off or bets which were being laid off by individuals whose names are mentioned?

A. Bets I laid off for other bookmakers.

Q. And do you have any recollection as to any individual one of these transactions?

A. No, sir.

Q. Now isn't it a fact Mr. Kyne, or is it a fact that the individuals listed hereon, with the exception of a few items, such as in May of 1943, the St. Francis Hotel, Blackstone Hotel, Russell Waldon, assessor in San Francisco, together with certain checks, such as to the State Board of Equalization, Collector of Internal Revenue, Castro Flower Shop, Haas Bros., San Francisco Water Department, Golden State Company, Gerow-Filter Company, Lang Laundry Company, Arthur Pratt, South San Francisco Bank, Western Union Company, Daily Racing Form, that those listed thereon on Exhibit 116, are in the bookmaking business, or were at the time the various checks referred to were drawn?

A. Yes, sir.

Q. Are you able to state, and I will ask you whether or not, in instances of the various bookmakers or individuals engaged in bookmaking business, whose names appear hereon, if you were also

(Testimony of William E. Kyne.)

receiving cashier's checks or personal checks from them? [1124] A. Yes, sir.

Mr. Gillen: May it please the Court, I respectfully request an opportunity to move to strike the question and answer previous to the last question and answer, on the ground that it is incompetent, irrelevant and immaterial whether the persons to whom the checks were made were in the bookmaking business. I respectfully submit the only materiality would be did those cashier's checks represent any profit or loss that would ultimately inure to Mr. Remmer, either as a profit or loss, for the purposes of this case, the issues of this case.

The Court: Motion is denied.

Q. Mr. Kyne, how was this out-of-town business handled, that is, by what means of communication?

A. Telephone.

Q. And when you were placing bets with various of the individuals whose names are set forth hereon, in what manner did you communicate those bets?

A. By phone.

Q. And do I understand correctly that such business was conducted on a mutual trust business?

A. Yes, sir.

Q. And that periodical settlements would be had?

A. Yes, sir.

Mr. Campbell: I think that is all. [1125]

(Testimony of William E. Kyne.)

Recross-Examination

By Mr. Gillen:

Q. Mr. Kyne, do I understand then that these cashier's checks that are represented on these sheets of paper that are identified now as prosecution's Exhibit 116 in evidence, do not represent specific bets but represent rather settlements of accounts made from time to time, is that correct?

A. One or the other.

Q. It might represent both; it might represent a specific bet or it might represent a series of transactions being settled, is that true?

A. That is true.

Q. And it is true, is it not, all the instances where you purchased cashier's checks doesn't mean that they represented courtesy bets where you were simply passing money through, you were sort of a conduit?

A. All with respect to lay-off.

Q. I understand, but it would either be courtesy transaction where you collected some money and sent it off in cashier's check or whether you actually accepted a lay-off yourself and were sending him the amount you lost, is that correct?

A. Yes, sir.

Q. In other words, you wouldn't naturally be obtaining cashier's check and sending a man money that you had won, is that true?

A. No.

Q. Now when you say that these cashier's checks represent [1126] courtesy and lost bets under the lay-off plan, do you mean by your answer that it

(Testimony of William E. Kyne.)

is your recollection that most of the cashier's checks here represented courtesy bets?

A. Lay-off bets, yes.

Q. By the way, let me, with the Court's permission, show you this exhibit. Are some of these duplicate sheets here or are they all individual sheets? You understand what I mean—are there some duplications where two sheets were received by you?

A. I think they are all monthly sheets.

Mr. Campbell: There might be some duplicate sheets there.

Mr. Gillen: I think I observe some duplications.

Mr. Campbell: I think the document speaks for itself.

Q. Mr. Kyne, in regard to the power of attorney under date of February 13, 1945, which is now plaintiff's Exhibit 123, which is written power of attorney which we presented to Mr. Campbell for his use, it is a fact, is it not, that this power of attorney was executed and dated and acknowledged by a notary public the day before you left for the service, is that correct? A. Yes, sir.

Q. In other words, you left for the service on February 14, 1945, isn't that true? A. Yes.

Q. Now, Mr. Kyne, the various shops that are named there, four [1127] in number, in this power of attorney, namely 50 Mason Street, B & R Smoke Shoppe, 52 Mason Street, Warehouse and Office, 110 Eddy Street, tavern; and 186 Eddy Club, card room and liquor store, it is true, is it not, that as

(Testimony of William E. Kyne.)

of that date those were the only going enterprises in San Francisco in which you and Mr. Remmer had a mutual interest? A. Yes, sir.

Q. That was before the Menlo Club and before the Transit Smoke Shop, is that correct?

A. That is correct.

Q. Now let me ask you, isn't it a fact that from the very inception of your business with Mr. Remmer that you and Mr. Remmer both had mutual powers of attorney, you to act for him in his absence and he to act for you in your absence, covering any enterprises that you were interested in together? A. Yes, sir.

Q. And isn't it a fact that you were advised, despite the existence of that power of attorney, just before you entered into the service that because of the fact that you were going away to war that it might be well for you to execute a power of attorney naming the enterprises that were actually your mutual enterprises at that time and just before you entered the service, isn't that a fact?

A. Yes, sir.

Q. And of course, Mr. Kyne, since you were going into the army [1128] and Mr. Remmer was not going into the army, there was no reason why Mr. Remmer should have executed an additional power of attorney to you?

Mr. Campbell: Objected to as argumentative.

The Court: You may answer the question.

A. That is correct.

Q. Now Mr. Campbell, in redirect examination,

(Testimony of William E. Kyne.)

showed you certain income tax returns and asked you if you recalled supplying the particular figures, or any figures that appeared in those income tax returns, do you recall that? A. Yes.

Q. And particularly he showed you an income tax return for the year 1944, returned in 1945. Do you recall that?

Now, you, of course, had left almost exactly a month before that income tax was due; in other words, it was due on March 15th and you left on February 14th.

Mr. Campbell: To which tax are you referring?

Mr. Gillen: I said 1944.

Q. And then in regard to the income tax return for the year 1945, which was returned in the year 1946, you were away until June of 1946, isn't that true? A. Yes, sir.

Q. Now in the year 1945, that was the year, was it not, that for the first five months of the year no race tracks were operating any place in the United States, isn't that true? [1129]

A. I think it was four and a half months.

Q. It was from the first of the year until some time in May, was it not?

A. I don't remember the exact dates.

Q. When you took the money out of the Menlo account to repay Mr. Remmer for a share in the Transit Smoke Shop, you were asked by Mr. Campbell in redirect examination whether or not that was reflected on the books of the Menlo Club and you said you didn't know, is that correct?

(Testimony of William E. Kyne.)

A. That is correct.

Q. Tell me what was it that you did to make it known that you had borrowed or taken money from the funds of the Menlo Club, outside of putting on the check for Menlo Club Loan Transit Smoke Shop?

A. I believe that was the only notation I made.

Q. Did you put a marker in addition to that into the Menlo Club? A. No, sir.

Q. Do you recall, was that check issued by you, Mr. Kyne? A. Yes, sir.

Q. Do you remember whether or not you told Mr. Maundrell about this check, that is, that you had taken \$16,005.50 out of the Menlo Club account to put into the Transit?

A. I believe I did.

Q. Now instead of then putting a marker down Mr. Kyne, the [1130] Menlo bank account, that the Menlo Club by William E. Kyne had issued check to William E. Kyne as loan for the Transit, is that correct?

Mr. Campbell: Objected to as not the best evidence. The bank record would be the best evidence as to what that showed. I think the question incomprehensive, in that the bank account wouldn't show that.

The Court: I think he asked him what appeared from the check. Objection overruled.

Mr. Campbell: If that is the question, but that is not the way it is propounded.

The Court: That is what your question meant?

(Testimony of William E. Kyne.)

Mr. Gillen: Yes, your Honor, and it is prosecution's Exhibit 120 I am referring to and I am handing it, with your Honor's permission, to Mr. Kyne to examine to refresh his memory. Do you have the question in mind now?

Mr. Campbell: If the Court please, I make the further objection that the document speaks for itself as to what it says.

The Court: He may explain it. Objection will be overruled.

A. Read the question please.

(Question read.)

A. That is correct.

Q. Mr. Kyne, at the time you issued that check to yourself, did you know what credit there was or what equity there was to your credit derived from your working agreement in the profits [1131] of the Menlo Club?

Mr. Campbell: Objected to as not the best evidence. The books and records are the best evidence.

The Court: Objection will be sustained.

Mr. Gillen: That is all.

Redirect Examination

By Mr. Campbell:

Q. Now, Mr. Kyne, on this matter of power of attorneys, counsel asked you whether or not, from the very inception of your association with Mr. Remmer, you and Mr. Remmer had mutual powers

(Testimony of William E. Kyne.)

of attorney, to which you replied yes. Now during redirect examination you stated you had a power of attorney but had no recollection of when it was entered into. Has your memory been refreshed in that regard?

Mr. Gillen: I am going to object to this as improper re-redirect examination and also cross-examining his own witness.

The Court: Objection overruled.

A. I believe there is a card or paper in the Bank of America that explains it.

Q. Now, as to the time that you entered into these powers of attorney, do you recall when that was?

A. It would be when we first went in the business.

Q. And do you now recall whether or not some written power of attorney was entered into?

A. I think there is an agreement in the Bank of America. [1132]

Q. Will you state whether or not that is the usual power of attorney given to a bank to enable another person to endorse checks?

Mr. Gillen: Objected to, that would call for opinion and conclusion, may it please the Court, whether it is the usual thing that the Bank of America does, that would call certainly for his opinion and conclusion. It wouldn't be the best evidence or evidence, what the Bank of America does, if it usually does something.

(Testimony of William E. Kyne.)

The Court: The form of the question is a little bad, I think.

Mr. Campbell: Very well.

Q. What Bank of America was that delivered to?

A. I believe the Day and Night Branch.

Q. What was the occasion for your delivering that to the bank?

A. That is where we signed it, I think.

Q. Who has possession, or who had possession, of that power of attorney?

A. That I don't know.

Q. That is to say, was it left with the bank?

A. Either the bank or Joseph Haughey.

Q. What is your best recollection in that regard?

A. I am kind of hazy on it.

Q. Who drew the power of attorney?

A. I don't remember. [1133]

Q. Do you recall whether or not it was signed by both you and Mr. Remmer.

A. That I don't remember.

Q. Is there any event, such as the opening of a bank account, by which you can place the time?

A. No, sir.

Q. When was the last time you saw the power of attorney? A. That I don't remember.

Q. I believe you stated you do not know who has possession of it at this time?

A. No, I do not.

Q. What then did the power of attorney state?

A. I think it was in regard to books and checks.

(Testimony of William E. Kyne.)

Q. And what did it state with regard to books and checks? A. That I don't remember.

Q. To the best of your recollection?

A. I don't remember.

Q. Do you recall whether or not it authorized Mr. Remmer to conduct any businesses in your name?

Mr. Gillen: I offer the objection, may it please the Court, this is improper redirect examination. He is cross-examining his own witness, calling for something not the best evidence and counsel this morning very vehemently objected to my asking this gentleman as to his recollection, in fact this afternoon, as to what amount of credit he had on the books of [1134] the partnership. I think this is in the same category at least.

The Court: Objection overruled. Answer the question.

A. Will you read the question?

(Question read.)

A. No, I don't remember.

Q. Do you recall whether the power of attorney to which you refer was sworn to before a notary public?

Mr. Gillen: Objected to on the grounds as not being the best evidence, improper redirect. The power of attorney itself would be the best evidence.

The Court: Objection overruled.

A. I don't remember.

Mr. Gillen: And also may I add further that

(Testimony of William E. Kyne.)

power of attorney does not have to be acknowledged by a notary public in California.

The Court: The witness has answered the question. He said he did not remember.

Q. Counsel called your attention, in his recross-examination, as to the fact that in that power of attorney there is a business listed as 52 Mason Street, warehouse and office. Was there such a business in existence February 13, 1945? A. Yes, sir.

Q. What was the nature of that business?

A. Warehouse. [1135]

Q. Now is that the same warehouse that you have previously referred to, used simply for storing merchandise used in your bars? A. Yes, sir.

Q. It was not a public warehouse in any sense?

A. No, sir.

Q. And I take it the offices referred to were the offices of yourself and Mr. Remmer?

A. Yes, sir.

Q. And the others connected with the business?

A. Yes, sir.

Mr. Campbell: That is all.

Mr. Gillen: May I have the Court's permission now to ask Mr. Kyne for his recollection, if he has any, as to what credit he had standing in his name at the Menlo Club?

Mr. Campbell: Objected to as not the best evidence.

The Court: Objection sustained.

Mr. Gillen: I think it is in the same category as refreshing his recollection as to power of attorney and the details.

The Court: I do not agree with you in that respect. May the witness be excused, subject to call. Will you leave your address with the clerk?

Mr. Gillen: That subject to call is subject to call for either redirect or recross by either side? [1136]

The Court: Yes, for either purpose.

HAROLD H. MAUNDRELL

a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination

By Mr. Campbell:

Q. Will you state your name please?

A. Harold H. Maundrell.

Q. Where do you presently reside, Mr. Maundrell?

A. In Honolulu, Hawaii.

Q. What is your present business or occupation?

A. Restaurant business.

Q. Incidentally, what is the name of your restaurant there?

A. Maundrell.

Q. Now, Mr. Maundrell, are you acquainted with the defendant, Elmer Remmer?

A. Yes, sir.

Q. How long have you known him?

A. About 13 or 14 years.

Q. Have you ever heretofore been associated with him in connection with any business enterprises?

A. Cal-Neva Lodge.

Q. And when did you first become associated with the Cal-Neva Lodge?

A. I think that was in the summer of 1940.

(Testimony of Harold H. Maundrell.)

Q. How long did you remain at Cal-Neva [1137] Lodge?

A. Well, I was there through the summer of 1945; that is, I was only there in the summer time.

Q. I was going to ask, that is a seasonable operation, is it not? A. Yes.

Q. During the period of time that you were there, do you recall the months of the year that Cal-Neva Lodge was open?

A. Well, there was one or two years it was opened very early, around the first of May, I believe, or middle of May, but the usual opening date was on or about the middle of June.

Q. And how long each year, approximately, would Cal-Neva Lodge remain open?

A. Usually closed, with the exception of one or two years, after September 9th.

Q. Now what was the nature of your employment or association at Cal-Neva Lodge?

A. I was resident manager, in charge of the dining room and the hotel accommodations.

Q. Will you state whether or not your capacity there was that of an employee or as a owner or operator of the establishment? A. Employee.

Q. And will you state whether or not that was on a salary or percentage or combination of both arrangement? A. Salary basis.

Q. Straight salary basis? [1138]

A. Salary basis only.

Q. And who employed you originally, who originally hired you for that job?

(Testimony of Harold H. Maundrell.)

A. Mr. Remmer.

Q. Do you know whether or not it was a fact that Cal-Neva Lodge was operated by a corporation during those years?

Mr. Gillen: Objected to as leading and suggestive, may it please the Court.

The Court: Objection overruled.

A. A corporation.

Q. Now during the period of time that you were there at Cal-Neva Lodge, who was, if you know, the over-all general manager of the establishment?

A. Mr. Remmer was the over-all manager.

Q. During the period of time that you were there, did you have any supervision over or any employment in the gambling rooms of the Cal-Neva Lodge?

A. No, sir.

Q. And for the purpose of the record, the Cal-Neva Lodge that you are referring to is located where?

A. Lake Tahoe.

Q. On the Nevada side of the lake?

A. Well, a portion of it in California, but 95 per cent on the Nevada side.

Q. The building itself, Mr. Maundrell, is on the State Line, is [1139] it not?

A. A small portion of it, part of the dining room, a very small part of the dining room.

Q. And the balance is on the Nevada side, is that correct?

A. Yes, sir.

Q. And I presume the gambling room is on the Nevada side?

A. Yes, sir.

Q. Now during that period of time that you were

(Testimony of Harold H. Maundrell.)

there, from 1942 through the season of 1945, who was in charge of the gambling room?

A. Well, they had different managers during that time I was there.

Q. Do you recall who they were?

A. Well, Mr. Parman at one time.

Q. Mr. Walter Parman?

A. Mr. Walter Parman.

Q. Yes.

A. I think one season a Mr. Necheck.

Q. Was that Mike Necheck? A. Yes, sir.

Q. Yes?

A. And I think at one time Mr.—I don't recall his name at the moment.

Q. The two that you mentioned are the only two that you recall by name at this time? [1140]

A. At the moment, yes, sir.

Q. After the season of 1945, did you continue to be associated with Mr. Remmer in any enterprise?

A. Yes, sir.

Q. And will you state in what enterprise and where located?

A. The Menlo Club, Tiny's Waffle Shop, and the Menlo Bar and Cocktail Lounge on Eddy Street in San Francisco.

Q. Now when did you commence your association with those three enterprises, that is, the Menlo Club, the Menlo Bar and Tiny's Waffle Shop?

A. On or about the 20th of May, 1945.

Q. And how long did that association continue?

(Testimony of Harold H. Maundrell.)

A. I left in 1948, the spring of 1948.

Q. And was it shortly after that that you moved to Honolulu, the following fall? A. Yes.

Q. And it is a fact, is it not, that you were ill for a period of time? A. Yes, sir.

Q. And you severed your connection with Mr. Remmer in the spring of 1948; is that correct?

A. Yes, sir.

Q. Now what were the general nature of your duties with respect to the Menlo Club, the Menlo Bar and Tiny's Waffle Shop?

A. I was the office manager of the two [1141] places.

Q. What were the nature of your duties there as office manager?

A. As office manager, I took care of the books, took care of deposits of the Tiny's Waffle Shop and Menlo Bar, I took care of all the tax returns, took care of—

Q. By tax returns, what tax returns do you refer?

A. Withholding tax returns, federal old age, State social security.

Q. Did those include any income tax returns?

A. I did assist in income tax returns of some of the employees, with the assistance of Mr. Ayton.

Q. Did you assist or take part in the preparation of the income tax returns of Mr. Remmer?

A. Yes, sir.

Q. To what extent?

A. Are you talking about the—

(Testimony of Harold H. Maundrell.)

Q. Individual income tax returns.

A. Only in this respect, that I talked to Mr. Mooney on one or two occasions. He came into the office and asked me if I could assist him, give him Mr. Remmer's returns.

Q. And did you supply certain figures on those occasions? A. Yes, sir.

Q. What other duties did you have there as office manager? You related keeping books and making out social security and old age pension returns for the Menlo Bar; is that correct? [1142]

A. Yes, sir.

Q. Tiny's Waffle Shop and Menlo Bar?

A. I had charge of all pay roll accounts.

Q. Of what establishments?

A. Of Tiny's Waffle Shop and Menlo Bar. I did not have charge of the paying of the salaries to the Menlo Club. I did have charge of the keeping of the records.

Q. Of the accounts?

A. Of the accounts. I also had charge of the supervision of the Tiny's Waffle Shop. I had charge of the taking of the inventories of both the Waffle Shop and the Menlo Bar.

Q. Now did you have any duties with respect to the books and records of the 186 Club?

A. Not in the year 1945.

Q. During the time of your employment?

A. Yes.

Q. And did you have anything to do, in the course of your employment, with the keeping of

(Testimony of Harold H. Maundrell.)

books and records of the Day-Night Cigar Store?

A. Yes, sir.

Q. And did you have anything to do, in the course of your employment, with the keeping of the books and records of the 110 Eddy Street?

A. Yes, sir.

Q. And did you have anything to do, in the course of your [1143] employment, with the keeping of the books and records of the Transit Smoke Shop?

A. Yes, sir.

(Jury and alternate jurors admonished and recess taken at 4:00 p.m.) [1144]

December 20, 1951—10:00 A.M.

(Defendant present with counsel. Mr. Lohse absent.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, yesterday before recess you described your various employments with Mr. Remmer. Going back for a moment to the period of time that you were employed at Cal-Neva, as you stated, as manager of the bar, restaurant and hotel facilities. That was your employment there?

(Testimony of Harold H. Maundrell.)

A. Well, I wasn't manager of the bar. I was manager of the dining room and hotel.

Q. During that period of employment did you have anything whatsoever to do with keeping the records of the Cal-Neva, Inc.? A. Yes, I did.

Q. To what extent?

A. Well, in '43 I assisted in keeping the books of the pay roll and the disbursements, and also the income record of the dining room, hotel accommodations and the bar receipts.

Q. Did you keep the general ledgers or the journals of the corporation? A. No, sir.

Q. Will you state, if you know, who did during that period of your employment? [1145]

A. Well, it was Rod Perkins kept the books and I believe they were turned over to Mr. Semenza at the end of the season.

Q. By Mr. Semenza, are you referring to Lawrence Semenza, the certified public accountant at Reno? A. Yes, sir.

Q. And who is seated here at the counsel table?

A. Yes, sir.

Q. Now I believe you did state, after you left the employment at Cal-Neva to commence your association with Mr. Remmer at the Menlo Club, Tiny's Waffle Shop and the Menlo Bar, that you maintained the records of those enterprises; is that correct? A. Not all of the records.

Q. You maintained certain of the records of the services; is that correct? A. Yes, sir.

Q. And with relation to the Menlo Club, what

(Testimony of Harold H. Maundrell.)

books and records did you keep with respect to that operation?

A. 1945 I took charge of the pay roll records of the Menlo Club and also the withholding tax returns, federal old-age pension and social security returns. The cash returns I did not have charge of them.

Q. You mean recording it in the books of the Menlo Club? A. Not in the 1945 period.

Q. In 1946 what records did you [1146] maintain?

A. I kept the records I just mentioned, plus the recording of the daily sheets of the Menlo Club. By that I mean the poker receipts that were turned in to the cashier's office or made up by the cashiers each day.

Q. You have reference to poker sheets—I am going to show you government's Exhibit 114, 114A and 114B in evidence, and ask you if these are a part of the poker sheets to which you refer?

Mr. Gillen: May it please the Court, these are exhibits that your Honor, following the ruling concerning the 110 series, your Honor said you would hear us and consider whether or not you would revoke your order permitting them.

Mr. Campbell: I am going to lay a further foundation at this time.

The Court: I think the present situation is that 114 stood as admitted exhibits, but if counsel intends to lay further foundation before he attempts to use them as he would if they had been admitted

(Testimony of Harold H. Maundrell.)

in evidence, I think we can proceed along that line.

Mr. Gillen: I wanted to remind you of your promise to consider the matter further.

The Court: The question was, I think, of foundation and if the foundation as about to be made did establish——

Mr. Gillen (Interrupting): May I suggest this, that the exhibits may be treated now, so far as reference to their contents, as if merely marked for identification? [1147]

Mr. Campbell: I think we should meet that question as we come to it.

The Court: I think counsel has indicated that he was going to lay the foundation.

Mr. Gillen: If your Honor feels the foundation is laid, that is one thing; then will your Honor consider hearing us?

The Court: It depends on the situation. We will see how it appears at that time.

(Question read.)

A. These are some of the poker sheets. I can't state at this time that these are the exact poker sheets.

Q. What is your best recollection?

Mr. Gillen: May it please the Court, the witness has stated that he can't say they are the exact poker sheets.

The Court: You may answer this question.

A. Well, to the best of my ability I would say at this time that I couldn't say that these are the poker sheets.

(Testimony of Harold H. Maundrell.)

Q. You stated you kept the pay roll records for the Menlo Club?

A. Yes, sir.

Mr. Campbell: I am going to ask to have these two bound volumes marked government's Exhibits 124 and 124A, respectively, for identification.

Mr. Golden: Those came out of the box we have been referring to, your Honor.

Mr. Campbell: They did not. [1148]

Mr. Campbell: While counsel are examining those records, I will ask to have marked for identification the following, each of which have been taken from possession of the clerk of this court and were heretofore delivered to the clerk under the order of the Court.

Mr. Golden: Then it will be understood, your Honor, that we have our objection and motion and ruling will be denied.

The Court: Of course they are just marked for identification now.

Mr. Golden: Of course, our objection goes to their use at all and our motion goes to suppressing them, so it should be made now as well as when they are offered in evidence. Will the record show that we made the objection and motion?

The Court: To what is your objection addressed now?

Mr. Golden: The objection is addressed to the use by the prosecution of any of the material which was delivered to the clerk of the court.

The Court: On the grounds heretofore stated?

(Testimony of Harold H. Maundrell.)

Mr. Golden: Heretofore stated.

The Court: It may appear in the record.

Mr. Golden: And likewise our motion to suppress.

The Court: That may be deemed to have been made. The same ruling.

Mr. Campbell: As government's Exhibit 125 for identification, ledger book bearing the typewritten slip on the cover, [1149] "Menlo Club 1949." As No. 126 for identification, a series of ledger sheets, with a pencil notation on the cover, "Menlo Club 1946." As 126 for identification a bound group of accounting sheets, bearing the typewritten notations "Tiny's Restaurant," and in pen and ink the figures "1946." As 128 for identification, a group of ledger sheets bearing on the cover in pencil the notation "Tiny's Restaurant and Menlo Bar 1945." As 129 for identification a group of bound ledger sheets, bearing on the cover in typing "Menlo Bar" and in pen and ink the figures "1946." Do counsel desire to examine these?

Mr. Gillen: Yes, please.

Q. Mr. Maundrell, I am going to show you government's Exhibits 124 and 124A for identification, and ask you if you recognize those books?

A. Yes, sir.

Q. And what are those books?

A. They are the pay roll account that was kept of the employees of the Menlo Club.

Q. And were those records which were kept in the course of business of the Menlo Club?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Mr. Campbell: They will be offered in evidence at this time as government's Exhibits 124 and 124A.

Mr. Golden: I offer the objection, your Honor, that they are part of the records which we maintain were illegally [1150] obtained and retained by the government. We have no specific objection to offer.

The Court: Objection will be overruled and Exhibits 124 and 124A are admitted in evidence.

Q. Now, Mr. Maundrell, with regard to the poker sheets which you referred to and from which you stated you made entries into the ledgers of the Menlo Club, will you describe such sheets?

Mr. Gillen: I am going to offer the objection, may it please the Court, that that is calling for characterization by the witness, conclusion and opinion, not the best evidence. Mr. Maundrell might have a very perfectly odd view of the matter which might not be the view of your Honor and myself in describing them.

Mr. Campbell: I am not asking for conclusions; I am asking for description.

The Court: Objection overruled.

A. The records in the Menlo Club were kept by various cashiers on poker sheets and they were of a size of the poker sheets which you have in your hand at the present time.

Q. You are referring to government's Exhibit 114?

A. Yes, sir.

Q. And what information was contained on those sheets?

(Testimony of Harold H. Maundrell.)

A. The pay roll, the bills that were paid daily, that is, the bills that were collected and paid by COD, the amount of money that might be owing to any of the players or people that were [1151] members of the club, the amount of money that was collected from the tables as fees from the players, the amount of money that was drawn and the names of the persons who drew money from the cashier to play in the games, and the totals and the final analysis of the whole sheet.

Q. Now will you examine again government's Exhibits 114 to 114B, inclusive, and without reference to the material set forth thereon, will you state whether the information purported to be disclosed thereon is the information to which you refer as having been on the poker sheets given to you for the purpose of making entries in the books?

Mr. Gillen: May it please the Court, of course this has been asked and answered. The witness already said they looked similar to the form used, but he couldn't say they were the exact form or the identical sheets. If the prosecution will disclose where they and how they obtained these particular exhibits, it is possible that the defense would then determine whether or not they were the authentic sheets. We might stipulate that they go into evidence if they care to disclose that to us.

Mr. Campbell: I think my question is proper.

The Court: Objection overruled. Answer the question.

(Question read.)

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. Now do you observe on the sheets which you hold in your hand what purports to be wages paid to employees? [1152]

A. Yes, I do.

Q. Now I will ask you to examine government's Exhibits 124 and 124A, which you have identified as pay roll accounts, and see if the same information which is set forth on the three groups of sheets as to the names of employees and amount of wages paid to them is reflected in Exhibits 124 and 124A?

Mr. Gillen: May it please the Court, I think I should at this time, and in the interest of time and to facilitate the progress of this case, again renew my offer, if the government cares to disclose where they obtained these exhibits——

The Court: That has been made and the government has not made any response to it, so I do not see any reason why it should be renewed.

Mr. Gillen: I had in mind we might be able to save considerable time.

The Court: You might have a conference with counsel and any suggestions could be made privately rather than before the jury. May I have the question?

(Question read.)

A. I refer to 12-31-46, that is the date, Exhibit 114A——

Q. Will you point out to me where the wages appear on 114A?

Mr. Gillen: What pages are you referring to? There are two years there.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: That is 12-31-46.

Q. Will you point out to me on this Exhibit 114A where the [1153] wages appear on 114A?

A. On the upper right-hand side of the sheet. Now in referring to the first name, Atkinson, the date, 12-31-46. In our records the name Atkinson shows that he received \$23.45, there was \$3.45 withheld, which means that he received \$20.00, and this sheet here states that Mr. Atkinson received \$20.00 on that date.

Q. So that so far as that entry is concerned on Exhibit 114A, it is in conformity, is it not, with the exhibit you hold in your hand, government's Exhibit 124A?

A. Yes, sir.

Q. Is that true of the other employees whose names and amounts of wages are set forth on government's Exhibit 114A?

A. That is going to take me some little while. There are quite a few names here. The second name, Maloney, shows that he was paid \$12.50. Our records show——

Q. By "our" records, are you referring to the bound volume of the pay roll account?

A. Yes, sir, 124A. The records show \$13.85, \$1.35 withheld, making \$12.50.

Q. So that the two records are in conformity?

A. Yes, sir.

Q. Take just one more at this time, Mr. Maundrell. Take the next one.

A. The third name is Launny. Our records show that on the [1154] 31st he had \$11.37 coming, \$1.15

(Testimony of Harold H. Maundrell.)

withheld, which would make \$10.22. The sheet shows that he received \$10.00.

Q. So that the two records are in conformity in regard to that? A. A little bit off.

Mr. Gillen: They are not in conformity and I am going to object to counsel leading and suggesting they are.

A. There was 25 cents off.

The Court: The objection is overruled.

Q. So that there is a 22-cent difference?

A. That's right.

Q. Well, let's take the next one.

A. The next name is the name of Lefky. Our records show he had \$12.14, \$1.90 was withheld and the poker sheet shows that he received the sum of \$10.00.

Q. There is a difference between the two records of what amount? A. Twenty-four cents.

Q. Now I am going to show you at this time the plaintiff's Exhibit 126 for identification and ask you if you have seen that record before?

A. Yes, sir.

Q. And what is that record?

A. That is the record of the poker sheets starting January, 1946.

Q. And to what period?

A. Through December 31st of the same [1155] year.

Q. Now is the record which you hold in your hands a record kept by you in the course of the business of the Menlo Club? A. Yes.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: This will be offered in evidence as Exhibit 126.

Mr. Golden: The only objection, your Honor, is to its illegal acquisition and retention and never returned to us.

Mr. Campbell: This, at the time of identification, was produced from the clerk's records.

Mr. Golden: We have both objections to it, both the former one and this one.

The Court: Yes, both will be overruled and Exhibit 126 admitted in evidence.

Q. At this time also I show you government's Exhibit 125 for identification and ask you if you have seen that volume? A. Yes, sir.

Q. What is this book?

A. Well, this is the returns from the Menlo Club.

Q. I mean generally, what is the nature of the book? A. It was a simplified ledger.

Q. Was it maintained by you in the regular course of business of the Menlo Club?

A. Yes, sir.

Mr. Campbell: This will be offered in evidence as government's Exhibit 125. [1156]

Mr. Golden: Just the standard run of objections and motions. Could it be understood that this entire—

The Court: I would rather have you make your objections as the exhibits are offered.

Mr. Golden: All right, your Honor.

The Court: So the objections are both overruled and the exhibit is admitted in evidence.

(Testimony of Harold H. Maundrell.)

Q. Now calling your attention, Mr. Maundrell, to plaintiff's Exhibit 126, which you have identified as a record maintained in the course of business of the Menlo Club for the year 1946, and setting forth the returns of the poker sheets for the period 1946, I will ask you to turn to the entries made as of December 31, 1946, under the subdivision headed "Income." Have you turned to that page?

A. Yes, sir.

Q. I call your attention to the fact that there are three columns on that page, headed "Tables," "Returns," and "Loans." What is meant by the column headed "Tables"?

Mr. Avakian: May we have a more specific identification of this page?

Mr. Campbell: I asked him to turn to the page referring to December 31, 1946, under the heading "Income." The pages themselves are numbered, are they, Mr. Maundrell?

A. No, sir.

Q. What is meant by that heading, [1157] "Tables"?

A. That is the amount of money that was received from the players.

Q. By that what do you mean?

A. Well, they pay so much to play. Each player at a table paid so much, depending on the size of the game. Some paid a half dollar for 40 minutes. The amounts were collected from the players at different tables.

Q. In other words, I take it a table fee would be picked up from each player at periodic intervals,

(Testimony of Harold H. Maundrell.)

depending on the size of the game; is that correct?

A. That is correct.

Q. And that is the amount set forth in there under the heading "Tables"? A. Yes, sir.

Q. Now the second column is headed "Returns"; to what does that refer?

A. The returns are the amounts of money that were turned back to the cashier from the amount of money that had been loaned to different players that played during the day or during that specific time of the day.

Q. Will you state whether or not such players were playing for the house?

A. They played for both the house and themselves, if they borrowed the money from the cage.

Q. Will you explain that arrangement? [1158]

A. At times, in order to make up a game—there may be three or four players come in to the card room and they might want to play a dollar game or a dollar limit. If there is no dollar limit game going on at that time, the house tried to accommodate them and will put in some extra players to make up a game. A game usually consisted of six or seven players. Most players like to play with seven players at a table.

Q. With respect to the men the house would put into the game for, you say, the accommodation of the players, will you state whether or not those men were regular employees of the club?

A. Some were regular employees, but the greater majority were not.

(Testimony of Harold H. Maundrell.)

Q. And what arrangements, if any, were had with those players in the event they won in a game?

A. If they won, the profits would be divided, the house got half and they would keep half.

Q. And if they lost? A. The house lost.

Q. So that the "Returns" column that you referred to refers to amounts turned back to the house by the players who had been financed by the house?

A. Yes, sir.

Q. Now as to the column headed "Loans," to what does that refer?

A. Well, that was the amount of money that was loaned to the [1159] players.

Q. To these same players who were put into the game for, as you say, the accommodation of the players? A. That's right.

Q. Now, I observe under date of December 31, 1946, you have three sets of figures under each of those headings, the first with a notation in the lower left-hand column of 8-4, 4-12, 12-8, to what does that refer?

A. That was the different shifts of the day, eight o'clock in the morning until four, four in the afternoon until midnight, midnight until eight the next morning.

Q. Now I will ask you what is the amount shown on the record which you hold in your hand, government's Exhibit 126, for the 8 to 4 shift under the heading "Tables"?

Mr. Gillen: Is that the same date, December 31st?

(Testimony of Harold H. Maundrell.)

Mr. Campbell: December 31, 1946.

A. \$315.50.

Q. And what is the amount shown under the heading "Loans" for that same period, 8 to 4?

A. \$415.00.

Q. And what is the amount shown under the heading "Returns"? A. \$182.00.

Q. And will you state what the figures show as to the 4 to 12 shift?

A. On tables, \$627.25; on loans, \$410.00; on returns, \$249.75. [1160]

Q. And will you state what is shown under those columns for the 12 to 8 shift, of December 31, 1946?

A. \$419.75 for tables; loans, \$233.50; returns, \$181.25.

Q. Now, Mr. Maundrell, were records similar to those which you have described kept as to each day's operation?

Mr. Gillen: Objected to as leading and suggestive.

The Court: Objection overruled.

A. Yes.

Q. Mr. Maundrell, I believe you were reading from May 31, 1946, rather than December 31, 1946.

Mr. Gillen: Was that all in error?

Mr. Campbell: I find he was reading from May 31st rather than December 31st, is that correct?

A. That is correct.

Mr. Gillen: What is correct? I don't understand. May I ask the Court through counsel, is it my understanding instead of being December—

(Testimony of Harold H. Maundrell.)

The Court: Put a question to clear this up.

Q. Mr. Maundrell, I originally asked you to turn to the figures of December 31, 1946. However, did you erroneously turn to the page as to some other date?

A. Yes, I did. There is a blank following that, I thought that was the end.

Q. Now will you turn to December 31, 1946?

Mr. Gillen: Then are those figures all of May 31st, [1161] is that correct? A. Yes, sir.

Q. Now you have December 31, 1946, in mind, do you not? A. Yes.

Q. Now on the 8 to 4 shift, what is the amount shown there as having been received from the table rental? A. \$438.25.

Q. I am going to show you the first sheet of government's Exhibit 114, the poker sheet for 12-31-46, and ask you if the same amount appears thereon as table rental for that shift?

A. Yes, sir.

Q. I am going to ask you, Mr. Maundrell, will you state what is shown in government's Exhibit 126 for the shift 8 to 4 as to the amount of returns?

A. \$208.00.

Q. Now will you examine the 8 to 4 shift on plaintiff's Exhibit 114 and state the amount that is shown there as to returns? A. \$208.00.

Q. Will you state what is shown in Exhibit 126, which you have in your hand, as to the amount of loans for the 8 to 4 shift? A. \$252.50.

(Testimony of Harold H. Maundrell.)

Q. And will you examine the 8 to 4 shift on government's Exhibit 114A and state whether or not that same amount appears [1162] as loans for that shift? A. Yes, sir.

Q. Now as to the second sheet, which appears to be the shift of 4 to 12, is that correct?

A. Yes, sir.

Q. Now will you examine the record which you hold in your hand, government's Exhibit 126, and state what is shown thereon for the shift 4 to 12 as the amount received from rental of the tables?

A. \$538.50.

Q. Now will you examine this 114A as to the 4 to 12 shift and state the amount shown thereon as to the amount received from table rental?

A. \$538.50.

Q. Will you again refer to Exhibit 126 on the 4 to 12 shift, and state what is shown thereon as to amount of returns? A. \$277.

Q. And will you examine the 4 to 12 shift on government's Exhibit 114A and state the amount of returns shown thereon for that shift?

A. \$277.

Q. And will you examine government's Exhibit 126 and state what is shown thereon as to the amount of loans to the players whom you have described for the 4 to 12 shift?

A. \$405. [1163]

Q. And will you examine again the 4 to 12 shift on government's Exhibit 114A and state what is shown thereon as the amount of loans?

(Testimony of Harold H. Maundrell.)

A. \$405.

Q. Will you examine the corresponding three columns—do this to yourself—on Exhibits 126 and 114A on the 12 o'clock midnight to eight morning shift and state whether or not the same figures appear on the two records?

A. Yes, sir.

Q. Now, during the recess, Mr. Maundrell, I am going to ask you to make a similar comparison with the record you hold in your hand, government's Exhibit 126, with Exhibits 114 and 114B, so as to determine whether or not the figures appearing on government's Exhibit 114 and 114B are the same as reflected in government's Exhibit 126, which you hold in your hand.

May I suggest a recess at this time?

(Jury and alternate jurors admonished and short recess taken at 10:55 a.m.)

11:15 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, during the recess did you compare plaintiff's [1164] Exhibit 114, the poker

(Testimony of Harold H. Maundrell.)

sheets for the date of January 1, 1946, with plaintiff's Exhibit 126, which you have identified as the book maintained in the course of business of the Menlo Club? A. Yes, I did.

Q. And do you find that the same figures as set forth in plaintiff's Exhibit 114 as to the returns from tables, amounts of loans and returns, are the same in each of the exhibits?

Mr. Gillen: Objected to as leading and suggestive.

The Court: Well, it is leading.

Mr. Campbell: I was trying to save time. I can take it through each one.

Mr. Gillen: We offered to save time.

The Court: It is leading, but he may answer the question.

A. Yes, sir.

Q. Now with respect to government's Exhibit 114A, the poker sheets, for December 31, 1946, and directing your attention to the first page thereon, purporting to be the shift from 8 to 4, will you state—I call your attention to the upper left-hand corner, the first entry that appears, amount drawn \$100, Miller, returned \$81.00, to what does that refer?

A. That means that Miller borrowed \$100 and played cards and after he completed his game he returned the \$81.00.

Q. Now who was Miller?

A. I don't know.

Q. Do you recall whether or not Miller was an

(Testimony of Harold H. Maundrell.)

employee of the [1165] Menlo Club as of December 31, 1946?

Mr. Avakian: Your Honor, my understanding was that up to this point counsel was laying further foundation for Exhibit 114 series, but it appears he is now going into the contents of it and if that is so, we would like to be heard on our motion to strike these documents, on the ground no proper foundation is laid.

The Court: What is the situation? Have you finished your foundation?

Mr. Campbell: I think we have certainly shown sufficiently here.

Mr. Avakian: May we be heard?

The Court: I am satisfied with the foundation. The exhibits will stand admitted in evidence.

Mr. Avakian: May we request an opportunity to be heard, your Honor, because we would like to explain to your Honor our feeling as to foundation not laid with respect to other entries. The document has been corroborated as to certain entries, but counsel apparently wants——

The Court: I think that can be taken care of by taking a recess and letting this witness go through and make comparisons of all the different dates that are mentioned in the exhibit.

Mr. Avakian: I respectfully state to your Honor I believe there are entries on those poker sheets which the witness [1166] will not be able to corroborate by reference to the book.

(Testimony of Harold H. Maundrell.)

The Court: I do not feel each and every one would have to be accurately corroborated.

Mr. Avakian: But, your Honor, it is only those others that are material, but as to those corroborated, they are already in the record and counsel apparently wants to use other entries.

The Court: The purpose I have in mind is whether these 114 are the actual poker sheets entered in the record business of the club.

Mr. Avakian: And both witnesses have said they don't know.

The Court: And if it should appear that the entries correspond to a great extent as to different items, I think the foundation would be satisfactorily laid in that respect.

Mr. Avakian: But, your Honor, the point is counsel apparently wants to use other entries on these poker sheets that are not corroborated.

The Court: It doesn't make any difference whether he does or not, if the Court feels that those are established as the poker sheets of this organization.

Mr. Avakian: Both witnesses have said they don't know.

The Court: That is a matter to be considered. Both witnesses have said, Mr. Kyne and this witness, that [1167] they are similar—

Mr. Avakian: In form.

The Court: He did not say in form. He said similar.

Well, that is the way I feel about it.

(Testimony of Harold H. Maundrell.)

Mr. Avakian: May the record show that these sheets were produced not by Mr. Kyne or Mr. Maundrell, but by the government's counsel?

The Court: The record certainly shows that now. So the order admitting Exhibits 114, 114A and 114B will stand. They are all admitted in evidence.

(Question read.)

A. No, I do not.

Q. First let me ask you this, do you know what Miller that refers to? A. No, I do not.

Q. I call your attention to the fact that also on government's Exhibits 114 and 114B, sheets for January 1, 1946, and January 1, 1947, also contain the name of Miller as having received a loan and made returns, is that correct? A. Yes, sir.

Q. Does that in any way refresh your recollection as to who was Miller?

Mr. Gillen: May I suggest the name Miller, without any initial or anything?

Mr. Campbell: Just the name Miller [1168] appears.

A. Well, they had a great many employees there and I didn't know them. I would say of all those employees I knew none of them except maybe one or two. I didn't inhabit the place, I was never around there except in the morning.

Q. I call your attention to plaintiff's Exhibit 124A, the pay roll record for 1946, and call your attention to the name of Oliver D. Miller, showing only one day of employment, May 22nd, do you

(Testimony of Harold H. Maundrell.)

know whether or not that is the Mr. Miller as referred to on these sheets? A. No, I don't.

Q. Now I call your attention to the fact that also under the heading "Return" on this sheet 114A for December 31, 1946, under the heading "Return" appears in blue pencil "Telephone Remit \$10.25," do you recognize that writing?

A. No, sir.

Q. Do you know to what that item refers?

A. No, sir.

Q. I call your attention to the upper right-hand corner, where there appear various names with amounts ranging from \$20 to \$6.00 set against them, to what does that refer?

A. The salaries paid to the men, the employees, whose names appear there.

Q. And I call your attention to three additional items appearing in here, Meals, \$20; Linen, \$6.25; Trim cards, \$60, will you state whether or not those refer to expenses which were paid on [1169] that day and during that shift? A. Yes, sir.

Q. Now I call your attention to the fact that the amount "Loan" shows a total \$252.50, is that correct? A. Yes, sir.

Q. Consisting of \$100 loaned to Miller, \$100 to a man by the name of Caswell, who also appears as an employee, is that correct?

Mr. Gillen: I object to counsel suggesting that he also appears as an employee, because it is just a surname——

Mr. Campbell: I will amend the question.

(Testimony of Harold H. Maundrell.)

Q. The name Caswell also appears as an employee of the club?

A. Yes, Mr. Caswell as an employee.

Q. And \$50 advanced to one Carcilla, and I will ask you if the name Carcilla also appears among employees at the rate of ten dollars?

A. Yes, sir.

Q. And the balance of \$2.50 is made up of two items, \$1.00 and \$1.50, against the word "Players," is that correct?

A. Yes, sir.

Q. Now in the right-hand column to which you have referred, upper right-hand portion of the page to which I have directed your attention to the items which you say represent wages paid employees, plus certain expenses, make a total of \$279.25, is that correct? [1170]

A. Yes, sir.

Q. And also your attention is directed to the amount picked up from tables, \$438.25?

A. That's correct.

Q. Now will you examine this page particularly and state whether or not, on the basis of the figures to which I have directed your attention, there was any profit for that shift in the operation of the club, after the payment of salaries and the expenses enumerated, taking into account the amounts advanced to the players whom you have described and the amounts returned by them and taking into account the amount received from the rental of the tables arrived at?

Mr. Gillen: What date is that?

Mr. Campbell: That is December 31, 1946.

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. And is that done in the calculations set forth in the middle column at the middle of the page?

A. Yes, sir.

Q. Now in order to arrive at that, I notice that you have added, have you not, the amount of the returns from players, is that correct, to the amount received from rental of the tables?

A. Yes, sir.

Q. So that you have arrived at a total of \$646.25?

A. Yes, sir. [1171]

Q. From that you have subtracted, have you not, the amount loaned to players and the amount of expenses paid by way of salary and the other expenses as set forth in the column, incidentals?

A. Yes, sir.

Q. A total of \$531.75?

A. Yes, sir.

Q. So that for that shift you have arrived at what profit?

Mr. Golden: Your Honor, I do not understand that this witness said he had done this.

Mr. Campbell: I will reframe the question.

Q. So according to that sheet there is shown how much profit from that shift?

Mr. Avakian: May it be understood all prior sheets likewise was not the witness' subtraction on the sheet.

The Court: No, I can't go back over the record.

(Last question read.)

(Testimony of Harold H. Maundrell.)

The Court: Have you any objection to that question?

Mr. Avakian: Not to that. We would like to strike the answers prior on the ground it assumes something not in evidence.

The Court: There was no objection made at the time they were offered. The answer may be given to this question.

A. \$114.50. [1172]

Q. Immediately below that figure appears the figure \$10,000, do you know to what that refers?

A. The bank roll.

Q. And immediately below that, after having added \$114.50, there appears the figure of 10,114.50, what does that represent?

A. Well, that was the bank roll at the completion of the day, this particular shift.

Q. Now turning to the second page, I direct your attention to similar entries in the nature of those you described on the first sheet appear on the second?

A. Yes, sir.

Q. That is as to wages, expenses, loans, to players, and return and tables?

A. Yes, sir.

Q. I direct your attention to the figure you referred to, bank roll, at the end of the first shift shows \$10,114.50, to the words appearing below, "Top \$10,114.50," does that also refer to the bank roll as found at the end of the first shift?

A. Yes, sir.

Q. Now this particular sheet shows a loss, does it not?

A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Mr. Gillen: What sheet is that?

Mr. Campbell: Second sheet, government's Exhibit 114A, the shift 4 to 12. [1173]

Mr. Gillen: Is that December 31, 1946?

Mr. Campbell: Yes, sir.

Q. And that loss was in what amount for that particular shift? A. \$111.50.

Q. Now it is a fact, is it not, that included in the expenses of that shift were purchase of six gross of Bee cards at \$365.50?

Mr. Gillen: Objected to as leading and suggestive.

The Court: It may be preliminary. Answer the question.

A. It is so stated on the poker sheet.

Q. So that according to this sheet the new top for the new bank roll is what at the end of that shift? A. \$10,003.

Q. Now referring to the third sheet of the series, also in government's Exhibit 114A, and referring to the shift 12 to 8, of the 12 midnight to 8 in the morning, is that correct? A. Yes.

Q. What does that sheet show as to wins or losses?

A. It shows that they won \$156.

Q. What does it show as to the bank roll as at the end of the third shift?

A. It shows \$10,159.

Q. I take it from your testimony, Mr. Maundrell, that that amount is arrived at after deduction of all the expenses as set forth on these three

(Testimony of Harold H. Maundrell.)

sheets, is that correct? [1174] A. Yes, sir.

Q. Now I direct your attention, still referring to Exhibit 114A, to certain notations which appear in the lower left-hand corner under the heading "Floor," Atkinson, Lefky, Anderson, Parrish, and certain amounts set forth opposite each one. Do you know to what that refers?

A. Those are floormen that worked there from time to time, they would go to the cage and get money, usually in chips which they carried in their pockets, and in the event a player wants chips immediately, say \$50 or \$100 worth of chips, they gave them the chips. At the end of the day that money is returned to the cage.

Q. You say floormen, do you know what their duties were other than cashing chips?

A. Yes, they ran games, each one had so many tables. They got the players for the games, put the games together, kept them going, collected the table fees that were due, sometimes they go in the dining room and buy them a cup of coffee, that is what those charges of meals were for. They supplied them with those.

Q. I call your attention, still referring to plaintiff's Exhibit 114A, to the right-hand lower corner, in which appears various names, this particular one, Hastings, Rice, Chappy, Posey, Smthy, Pesty, Duke, and so on, some 15 names, opposite which are set amounts, some of which have been scratched out, [1175] and ask you to what those refer, if you know?

(Testimony of Harold H. Maundrell.)

A. Those are the amounts of money that were owed to the club and they had markers in those different figures, different amounts, instead of IOUs.

Q. What, if anything, does it indicate when the figure has been scratched out, as opposite Hastings, there was five hundred, does that refer to \$500 or \$5.00, do you know? A. That was \$500.

Q. And I observe that this is scratched out. What, if anything, if you know, would that indicate? A. He paid back \$500 he owed.

Q. Would that be during this particular shift, the 8 to 4 shift? A. Yes, sir.

Q. And I observe opposite the name Chappy there appears \$130 scratched out, \$200 scratched out and \$100, what would that indicate?

A. Well, that means he borrowed \$150.

Q. Is that 130 or 150?

A. Well, it might be 130—borrowed \$200, he also borrowed \$100, but he paid it all back except \$100.

Q. And that would be during the course of this shift?

A. Yes, sir. It doesn't necessarily mean that that money was borrowed in the course of that shift, but the scratches would mean it was paid off. [1176]

Q. Calling your attention, still referring to plaintiff's Exhibit 114A, to the fact that similar items appear on each of the shifts, are they amounts owed by the players which they have borrowed, put on each page of the shift for the day?

(Testimony of Harold H. Maundrell.)

A. Yes, sir. Let me make myself understood. Some of these items were not borrowed on that particular day or shift. They carried over maybe the day before, or maybe a week previous to that.

Q. What I was getting at is this, on each shift is there set forth, if you know, in the lower right-hand corner the amount outstanding, owing to the club, by those who have borrowed from the club?

A. Yes, sir.

Q. So that each cashier, as he goes on duty for the shift, has the entire list before him, is that correct?

A. Yes, sir.

Q. And that player may or may not play during that shift or may or may not pay anything on his account during that shift, is that correct?

A. Yes, sir.

Q. Now I call your attention to the fact that in this list on the first page, still referring to government's Exhibit 114A, of the money owed, appears the word "Floor, \$100," and apparently scratched out. Do you know to what that refers?

A. No, sir. [1177]

Q. On the second page is carried "Floor, \$400," which is on the 4 to 12 shift, and on the 12 to 8 shift it is carried at various amounts, scratched out until there remains \$100 with the word "TR" opposite it. Do you know to what that refers?

A. No, I do not.

Q. Now will you glance over briefly at Exhibit 114 and 114B, the poker sheets for January 1, 1946, and January 1, 1947, and state whether or not they

(Testimony of Harold H. Maundrell.)

contain the same type of information as you have described with relation to plaintiff's Exhibit 114A?

A. Yes, they do.

Mr. Gillen: The question is objectionable on the several grounds, your Honor, but I won't waste the time objecting.

The Court: It has already been answered.

Q. Now referring to plaintiff's Exhibit 126, I will ask you first if there is set forth herein the amount of income derived by the Menlo Club for the year 1946 from the table rentals which you have described? In other words, is there an annual figure or is that set forth in monthly figures?

A. In monthly figures.

Q. Is that also true of the heading "Loans," which you have described as advances to players?

A. Yes, sir.

Q. I believe you stated, did you not, that loans also include the salaries and incidental expenses, is that correct?

A. Yes, sir. [1178]

Q. And that is also set forth by monthly figures?

A. Yes, sir.

Q. I mean monthly totals.

A. Monthly totals, that is right.

Q. And is that also true of the returns, which you have described as the amount returned by those financed by the house to play the games?

A. Yes, sir.

(Jury and alternate jurors admonished and noon recess taken at 11:45 a.m.)

December 20, 1951, 1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Mr. Avakian: May we have the last few questions read?

(Questions read.)

Mr. Avakian: I believe Mr. Campbell inadvertently made a wrong description.

Mr. Campbell: Yes, I was going to correct that.

Q. Mr. Maundrell, apparently there was some misunderstanding between us this morning concerning one of the records, 1946. I recall you testified there was set forth on the right-hand side of these sheets the pay roll and certain incidental [1179] expenses which in arriving at the day's profit as set forth here, you have deducted from income, is that correct, was deducted on these sheets rather in arriving at the daily profit, is that correct?

A. Yes, sir.

Q. However, in Exhibit 126, in which figures from poker sheets have been transposed into the ledgers of the Menlo Club fund, does the figure

(Testimony of Harold H. Maundrell.)

"Amount Loan" include the pay roll and other expenses set forth on the poker sheets?

A. No, it does not.

Q. Those were handled separately, were they?

A. Yes, sir.

Q. So I take it then that your monthly total appearing in that record, government's Exhibit 126, under the heading "Income" would represent the gross take prior to the deduction of expenses, such as wages, salaries and other expenses of doing business?

A. Yes, sir.

Q. You stated, I believe, that you did not have a yearly total but that you did have, in that government's Exhibit 126, monthly totals of gross statement?

A. Yes.

Q. Will you state what they were by months for the year 1946?

A. As of January 31, 1946, the total for the month taken in on tables was \$53,293.75; the amount of the returns, \$33,923; the [1180] amount of the loans was \$48,706.50.

Q. Making a gross income of what amount?

A. The gross revenue is here.

Q. Net revenue?

A. The gross net revenue was \$38,510.25. That is monthly. February 28th, 1946: tables, \$49,245.25; returns, \$29,903.50, and loans, \$43,993; gross revenue, \$35,155.75. March 31, 1946: tables, \$53,509; returns, \$32,101.25; loans, \$48,223.25; gross net, \$37,397.

Mr. Avakian: Your Honor, we are a little bit

(Testimony of Harold H. Maundrell.)

confused by the term "gross net." I wonder if we could ask counsel to clarify that so we could clarify these figures?

Mr. Campbell: Finish the figures first, Mr. Maundrell.

A. I just gave the figures as of March 31, 1946. I will repeat them. The amount of money taken in on the tables amounted to \$53,509. The amount of money taken in on returns was \$32,101.25. They are added together and the loans are deducted from that amount. The loans, \$48,223.25, which would leave a balance on hand of \$37,397.

Q. Proceed.

A. April 30, 1946: tables, \$50,455.75; the loans, \$45,880.25; the returns were \$27,444.25, leaving a gross net revenue of \$32,019.75. May 31, 1946: tables, \$31,764.50; loans, \$22,013.00; returns, \$17,193.85, leaving a gross net revenue of \$26,945.35. June 30, 1946: tables, \$38,307.25; loans, \$35,103.10; returns, [1181] \$26,049.85; gross revenue, \$29,234. July 31, 1946: tables, \$48,225.25; loans, \$45,028.50; returns, \$29,199.50; gross revenue, \$32,396.25. August 31, 1946: tables, \$55,914; loans, \$47,896; returns, \$28,351.25; gross revenue, \$36,369.25. September 30, 1946: tables, \$54,130.25; loans, \$44,714.50; returns, \$26,695; gross revenue, \$36,116.75. October 31, 1946: tables, \$52,067; returns, \$26,484.50; loans, \$41,437.50; gross revenue, \$37,114. November 30, 1946: tables, \$50,927.25; returns, \$26,849.45; loans, \$41,645.25; gross revenue, \$36,-

(Testimony of Harold H. Maundrell.)

131.45. December 31, 1946: tables, \$50,175; returns, \$26,851; loans, \$41,872; gross revenue, \$35,154.

Q. Now, Mr. Maundrell, did you have a written agreement with Mr. Remmer as to a share in the profits of the operation of the Menlo Club?

A. Yes, sir.

Q. Do you have that with you? This is the original of such an agreement?

A. Yes, sir.

Mr. Campbell: I will ask that this be marked with government's next number.

The Clerk: No. 130.

Mr. Avakian: Your Honor, I want to say, by way of explanation, in comparing 130 for identification with our copy, I inadvertently wrote on the original rather than the copy and with the permission of the Court I will strike that out [1182] and it will be understood that was placed on there erroneously.

Mr. Campbell: No objection.

Mr. Avakian: We have no objection to 130 going in evidence.

Mr. Campbell: It will be offered.

The Court: 130 is admitted in evidence.

Q. Now when was it, Mr. Maundrell, that you first started your association with the Menlo Club?

A. I arrived in San Francisco around the 20th of May, I believe it was, 1945.

Q. And was that the time that you commenced your association there?

A. Well, no. I had several conversations with Mr. Remmer. I was living at the time in Beverley

(Testimony of Harold H. Maundrell.)

Hills in southern California and we had four or five conversations relative to my employment there.

Q. What is your best recollection when you began your active employment?

A. From May 1, 1945.

Q. Now I direct your attention to the fact that this agreement is dated the 4th of November, 1946.

A. Yes, sir.

Q. And I will ask you if there was an agreement prior to that time with Mr. Remmer?

A. Yes, sir. [1183]

Q. Was that a written or oral agreement?

A. Oral agreement.

Q. And I will ask you whether or not the oral agreement was substantially in the same terms as embodied in this written agreement?

A. Yes, I would say yes.

Mr. Campbell: Could it be agreed, rather than read the document, that the document is in the same terms as that heretofore read in respect to the witness, William Kyne, with the exception that the interest referred to herein is a 10 per cent interest?

Mr. Avakian: And on the second page in the next to the last paragraph the amount—

Mr. Campbell: Yes, whereas Kyne's is 26 thousand, the amount set forth herein is \$17,500, but in all other particulars and with the exception this calls for ten per cent rather than 15 per cent, the document is identical.

(Testimony of Harold H. Maundrell.)

Mr. Avakian: Yes, I believe they are word for word.

Q. Now I am going to show you, Mr. Maundrell, plaintiff's Exhibit 129 for identification, marked "Menlo Bar, 1946," and ask you if you recognize that as a book kept in the regular course of the business of the Menlo Bar?

A. Yes, sir.

Q. Was that book maintained by you?

A. Yes, sir. [1184]

Q. And the entries made by you?

A. Not all of the entries. Some were made by my secretary. There are a great many entries made by me.

Q. Well, were the entries made by you or under your supervision? A. Yes, sir.

Mr. Campbell: This will be offered as Exhibit 129.

Mr. Golden: No specific objection other than the objection we have to all this material, that it has been in the hands of the government.

The Court: It will be understood and the objection will be overruled.

Q. I show you plaintiff's Exhibit 127 for identification, a book entitled "Tiny's Restaurant, 1946," and I will ask you if you recognize that as a book maintained in the regular course of that business and entries made by you or under your supervision? A. Yes, sir.

Mr. Campbell: I will offer this as government's Exhibit 127.

(Testimony of Harold H. Maundrell.)

Mr. Golden: Same objection and motion, your Honor.

The Court: Same ruling. The exhibit will be admitted in evidence, No. 127.

Q. At this time also I will show you government's Exhibit 112A for identification, a book bearing the title, "110 Eddy Street, 50 Mason," and ask you if you recognize that book? [1185]

A. Yes, sir.

Q. Is that a book maintained by you in the course of your employment, with the entries either made by you or made under your direction and supervision?

A. Yes, sir.

Q. And to what enterprise or enterprises does this particular record, 112A for identification, refer?

A. 110 Eddy Street tavern.

Q. I notice also the address 50 Mason on the front.

A. There are a few entries I notice in the back kept of my office, have nothing to do with 110 Eddy Street.

Q. Do they relate to the premises known as 50 Mason Street?

A. Yes, only to the office, the office that I maintained.

Q. Without stating the entries, what is the nature of the entries relative to the address 50 Mason Street?

A. Well, the different expenses paid at the office, paid by my office.

Q. Relative to what enterprise or enterprises?

(Testimony of Harold H. Maundrell.)

A. Well, there are different things, office supplies and stamps.

Q. Well, state whether or not they are expenses of maintaining the office where you were keeping the records of the various enterprises?

A. That is right.

Q. So in a sense they relate to all of the enterprises, is [1186] that correct, for which you kept records?

A. Well, no; 110 Eddy, the Day-Night, the 186 Club.

Q. Those three enterprises?

A. Those three paid a certain fee each month. When I first went to work for Mr. Remmer, I went into the Day-Night Cigar Stand, my original talks and topic of conversation with relation to going there and the other clubs were not mentioned at that time. It was after I came to San Francisco that we talked about it and then I took over the books later on.

Q. Your original employment was with reference to the Menlo Bar and Menlo Restaurant?

A. Yes, sir, Menlo Club.

Mr. Campbell: I offer Exhibit 119 in evidence.

Mr. Gillen: I would like an opportunity to examine Mr. Maundrell on voir dire in regard to 50 Mason Street expenses, to see whether he recalls whether those are his personal expenses or something to do with the defendant.

Mr. Campbell: I don't believe that is a matter for voir dire. If counsel desires to question him,

(Testimony of Harold H. Maundrell.)

he can go into it at a later time. It is not a matter of voir dire on qualifications.

The Court: You may ask.

Q. (By Mr. Gillen): Mr. Maundrell, in regard to expenses at 50 Mason Street, do you have any recollection whether or not those were personal expenses of your own or expenses to do with [1187] Mr. Remmer?

A. They were expenses of mine. In other words, I collected from 110 Eddy \$75 a month for expenses and I collected from the Day-Night Cigar Store a certain amount of money for expenses and those expenses went to pay some of the expenses at 50 Mason Street. They were not charges against any other account.

Mr. Gillen: I think they should be eliminated.

Mr. Campbell: Yes, I am willing to extract those pages from the book which you have identified.

Mr. Gillen: Of course, your Honor, the record should show that we interpose the same objection to the admission of the entire book.

The Court: The same objections Mr. Golden referred to?

Mr. Gillen: That is correct.

The Court: So understood. Otherwise those objections will be overruled and the exhibit admitted in evidence, 112A.

Q. (By Mr. Campbell): Now, Mr. Maundrell, you have extracted one page from the book, is that

(Testimony of Harold H. Maundrell.)

the only page which referred to personal expenses?

A. It is.

Mr. Campbell: May this be given a number simply for identification?

The Court: 112B for identification, 112 series.

Q. Now, Mr. Maundrell, you stated, I believe, that some time [1188] after you became associated with the San Francisco enterprises of Mr. Remmer's, you also took care of the books and records of the 186 Club, is that correct?

A. Not until 1946. I took care of some of the books.

Q. From whom did you take over the keeping of the records for that enterprise?

A. Mr. Slater.

Q. Do you recall approximately the date in 1946 when you took over those records?

A. It started as of the first of the year.

Q. That is the first of 1946? A. Yes, sir.

Q. And at that time were certain books and records turned over to you for that club?

A. Yes, sir.

Q. What was the nature of those books?

A. They were records kept by Mr. Slater, although at the time he had an agreement——

Q. (Interrupting): No, that is not responsive. I am asking for a description of the books that you maintained during 1946 for the 186 Club.

A. We had a ledger and journal I believe.

Q. Now did you subsequently, Mr. Maundrell, turn certain of those records over to the agents of

(Testimony of Harold H. Maundrell.)

the Bureau of Internal Revenue who were investigating this case? [1189] A. Yes, sir.

Q. And subsequent to that did you request, and was there returned to you, those records?

A. Yes, I made a request for certain books that I needed and they were returned to me.

Q. I call your attention to plaintiff's Exhibit 122 for identification, and ask you if that is your signature? A. Yes, sir.

Q. And is that the receipt given by you to the agents at the time the records were returned to you? A. Yes, sir.

Mr. Campbell: At this time I will ask that plaintiff's Exhibit 122 for identification be received in evidence.

Mr. Golden: No objection.

The Court: It may be admitted in evidence.

Q. Mr. Maundrell, this document reads as follows:

(Reads Exhibit 122.)

Q. Incidentally, who was R. W. Morgan?

A. He was a man working for the Bureau.

Q. The Internal Revenue agent?

A. Yes, sir.

Q. Now when did you last see those records which are referred to in this receipt, Mr. Maundrell? A. I don't remember.

Q. Do you know whether or not they were at 50 Mason Street at [1190] the time you terminated your connection with the enterprise?

(Testimony of Harold H. Maundrell.)

Mr. Gillen: Objected to as having been asked and answered. He said he doesn't know.

The Court: Objection overruled.

A. I don't remember.

Q. I believe you stated that in connection with that enterprise——

The Court (Interceding): When you say "that"——

Q. 186 Club—in connection with the 186 Club, you prepared certain of the tax returns, that is to say, the social security returns, is that correct?

A. Yes, sir.

Q. Now with reference to the black book referred to in this receipt, showing daily win and lose from March, 1943, to December 31, 1945, do you know who kept that record? A. No, sir.

Q. Was that a record which was turned over to you at the time you began keeping records of the 186 Club?

A. Those were records that were turned over to me by Mr. Slater and I merely filed them on the shelf.

Q. So far as you know, were there any other records maintained for that period from March, 1943, to December 31, 1945?

A. Not to my knowledge.

Q. Now referring to the ledgers set forth in this receipt, showing daily analysis of take and distribution of expenses for [1191] the period January 1, 1946, to June 30, 1946, was that a record which you kept? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. And as to the loose-leaf sheets showing daily take and distribution of expenses for the period July 1, 1946, to December 31, 1946, was that also a record which you kept? A. Yes, sir.

Q. What was the source of information which went into the record which you kept?

A. The poker sheets and certain bills that were presented to me from time to time.

Q. And by poker sheets, are you referring to poker sheets which were similar in nature to those you have identified with respect to the Menlo Club?

A. Yes, sir.

Q. I am going to show you a group of sheets headed "Poker," being Exhibits 110 to 110F, and using plaintiff's 110F, which bears date December 31, 1946, and ask you if you recognize that document? A. No, I do not.

Q. Can you state whether or not that document is similar to those which you used in posting the books of the 186 Club?

Mr. Gillen: Objected to as leading and suggestive. That question is not cross-examination.

Mr. Campbell: It does not suggest the answer, your Honor. [1192]

The Court: Objection overruled.

A. Yes, sir.

Q. Do you recognize any of the names appearing thereon?

A. Only one name, that is the name of Busterno.

Q. Who was Busterno?

A. He was one of the partners.

(Testimony of Harold H. Maundrell.)

Q. You stated, I believe, that in connection with your employment you made out the social security and federal insurance contribution returns for the 186 Club? A. Yes, sir.

Q. I will ask that this group, consisting of some five documents, headed "Employers Tax Return," be marked for identification as 131 for identification, as one group.

Mr. Avakian: Your Honor, the defense is agreeable to stipulate that plaintiff's Exhibit 131 may be received in evidence if the prosecution desires to offer it.

The Court: It may be admitted in evidence, Exhibit 131.

Q. Mr. Maundrell, I show you plaintiff's Exhibit 131 and ask you if you recognize these as employer's tax return of the 186 Club for the quarter ending December 31, 1945, and the four quarters of 1946?

A. Well, I didn't prepare these. These were done by Slater, 1945.

Q. I call your attention to the fact that the return is dated December 31, 1945, and the balance are for 1946? [1193]

A. Those in '46 I prepared, yes.

Q. Were those prepared by you?

A. Yes, sir, 1946.

Q. As a matter of fact, isn't that your handwriting thereon, that notation? A. No.

Q. You did, however, prepare them?

A. 1946.

(Testimony of Harold H. Maundrell.)

Q. Now I direct your attention to the one dated December 31, 1946, and again calling your attention to plaintiff's Exhibit 110F for identification, you have stated that these sheets, I believe, were similar to those which you utilized, is that correct?

A. Yes, sir.

Q. I call your attention to the fact that on each of these sheets there appears opposite various names on that date, December 31, 1946, the word "Wages," together with amounts, and I will ask you to examine these poker sheets as to those names and find if some names are listed as employees of the 186 Club as of the calendar year ending December 31, 1946?

A. There is Stewart here, Bert W.

Q. Is the word "Wages" under his name? I am referring to those that there are amounts listed as wages, to which there is Busterno, 25—do you find Busterno listed as an employee on the [1194] return?

A. Yes, sir.

Q. The next I call your attention on the poker sheet, Divodi, wages \$25, do you find him listed on the tax return as an employee?

A. Yes, sir.

Q. The next is Grafford, wages \$15, do you find him listed on the tax return as employee?

A. Yes, sir.

Q. The next is Osnato, \$15 wages, do you find him listed as an employee for that quarter? You do not find that one?

A. No, sir.

Q. The next sheet of 110F is the name of

(Testimony of Harold H. Maundrell.)

Shenave, wages \$12.50, do you find him on the tax return? Do you find that name?

A. Mike Shenave, yes, sir.

Q. Now you stated you did not find the name Osnato on the one you have before you?

A. What is the date of the return?

A. 12-31-46. I show you the balance of plaintiff's Exhibit 131, Mr. Maundrell, and direct your attention to the fact that on each of the other returns of employers tax returns there is listed as an employee the name Frank C. Osnato, do you see that?

A. Yes, sir.

Q. On the second of these documents, as an employee, Frank C. Osnato, do you see that?

A. Yes, sir. [1195]

Q. And the third one of these as an employee the name of Frank Clement Osnato?

A. Yes, sir.

Q. And on the last of these which I hold in my hand, as employee for the quarter ending September 30, 1946, Frank C. Osnato, as employee?

A. Yes, sir.

Q. I am directing your attention to the second page of plaintiff's Exhibit 110F for identification, and the name of Romero, wages \$12.50, do you find his name listed thereon?

A. Yes, sir.

Q. As an employee on the tax return filed?

A. Yes, sir.

Q. Now I direct your attention to the return for the period ending March 31, 1946, portion of government's Exhibit 131, and I also call attention

(Testimony of Harold H. Maundrell.)

to plaintiff's 110E for identification, which bears date of January 1, 1946, and the heading "Poker" sheet, calling your attention to certain names appearing thereon with the word "Wages," Reggio, wages \$15. Do you find him listed as employee for that period on the tax return?

A. Joseph Reggio, yes, sir.

Q. I call your attention to O'Neil, wages \$15, referring to 110E for identification, and I ask you, do you find his name listed as employee?

A. Roma O'Neil. [1196]

Q. I call your attention to the name Osnato, wages \$15, and ask you if you find his name listed as employee?

A. Frank Clement Osnato.

The Court: I take it when you repeat the names it is on that tax return?

A. Yes, sir.

Q. I call your attention now to the tax return for the quarter ending December 31, 1945, portion of government's Exhibit 131 in evidence, and call your attention to plaintiff's Exhibit 110D for identification, which bears a date 12-31-45, and direct your attention under the name of Riggio, wages \$15, was he listed as an employee for that period on the tax return?

A. Yes, sir.

Q. O'Neil, \$15, was he listed as an employee?

A. Ramon O'Neil.

Q. He was listed on the tax return?

A. Yes.

Q. Estano, \$15? A. Right, C. S.

Q. Tasons, \$12.50, was he listed as an employee?

(Testimony of Harold H. Maundrell.)

A. George Tasos.

Q. Gabriel, wage \$12.50, was he listed for that period? A. No, sir.

Q. Do you find on here as an employee for that period one Gabriel Sorantino? [1197]

A. Yes, there is Gabriel Sorantino.

Q. Louis Segalio, still referring to 110E for identification, do you find him listed for that period as an employee? A. Yes.

Q. Nick Valle, wages \$12.50, do you find him listed as an employee? A. Yes, sir.

Mr. Campbell: At this time, if the Court please, I am going to offer in evidence the poker sheets which form group 110 to 110F for identification.

Mr. Avakian: Your Honor, we have several grounds for objection to that offer. First of all, if these are being offered as purportedly the authentic poker sheets of the 186 Club, we make our usual grounds of objection that we have been making to all documents produced by the prosecution which they have declined to let us see, and make the same motion. Secondly, we object on the ground that no proper foundation has been laid because no witness from the witness stand has testified that he could identify these particular documents as the actual documents of the 186 Club and we are placed, your Honor, in this situation—there has not been produced so far any witness whom we can cross-examine as to whether these are the records. This is a very strange, and to me a very new manner, of introducing documentary evidence. If these ac-

(Testimony of Harold H. Maundrell.)

tually are poker sheets taken from 186 Club by the government, then we submit the proper [1198] foundation would consist of something from the agents who took them, to the effect that these are records they took, and testimony from any other agent who had custody of them in the interval, to the effect that these are the records that were turned over to him by the prior agent, and we could then establish a chain of authenticity, we could then cross-examine somebody as to whether they are the authentic records or transcripts made up by somebody during the four or five years since they were taken, and if they are transcripts, whether they are complete and accurate in every respect, but if these documents are received in this manner of foundation, then, your Honor, there is no sworn testimony that these are documents of the 186 Club and there is nobody whom we can cross-examine to determine on cross-examination whether these are the actual records which were taken from the 186 Club, and I submit, your Honor, as a matter of proper procedure, since these documents are produced by the prosecution, the prosecution should advise this court, through the witness, not the witness on the stand, who obtained these documents, when and where they were obtained, who has had custody of them from that time until now and then we could properly cross-examine on them.

The Court: Objection overruled and Exhibits

(Testimony of Harold H. Maundrell.)

110, 110A, 110B, 110C, 110D, 110E, and 110F are admitted in evidence.

Q. Now, Mr. Maundrell, in connection with your employment concerning [1199] the operation of the Menlo Club, the Menlo Bar and Tiny's Waffle Shop, was there a bank account maintained in your name? A. Yes, sir.

Q. And in what bank was that maintained?

A. Crocker National Bank.

Q. I show you plaintiff's Exhibit 27, which has heretofore been produced in evidence, relating to an account at the Crocker National Bank in the name of Elmer Remmer or Harold H. Maundrell, and ask you if that is the account to which you refer? A. Yes.

Q. The witness has called attention to the first document in this account produced here by the representative of the Crocker National Bank, namely, what purports to be a signature card. Now I will ask you if those account ledger sheets which are in the name of Elmer Remmer or Harold H. Maundrell, refer to that account, if you know?

A. Yes, the account was Elmer Remmer or Harold H. Maundrell.

Q. You did have such an account, however, in the Crocker National Bank? A. Yes, sir.

Q. Who were the authorized signators?

A. Elmer Remmer or myself.

Q. When was that account opened, to the best of your recollection? [1200]

(Testimony of Harold H. Maundrell.)

A. I think that was opened on or about the last of May or the beginning of June, 1945, I believe.

Mr. Gillen: The record would be the best evidence.

The Court: Yes.

Q. There is date appearing June 21, 1945, does that refresh your recollection? A. Yes, sir.

Q. Now, Mr. Maundrell, in respect to what businesses was that bank account used?

A. That was receipts that were taken in from Tiny's Waffle Shop and Menlo Bar and Cocktail Lounge, and then monies that were advanced to me from time to time.

Q. For various purposes?

A. For various purposes.

Q. Now to your knowledge did all of the receipts of the Benlo Bar and Tiny's Waffle Shop go into that account? A. Yes, sir.

Q. With the exception, I presume, of small daily payments?

A. Well, any cash accounts, no.

Q. With that exception? A. Yes, sir.

Q. And from that account did you handle the payment of expenses of those two enterprises?

A. Yes, sir. [1201]

Q. Now did you handle at any time the receipts of the Menlo Club? A. No, sir.

Q. Did you have any bank account, either in your name or to which you had access, in which the receipts of the Menlo Club were placed?

(Testimony of Harold H. Maundrell.)

A. No, sir.

Q. Were you an authorized signator on any account other than this Crocker National Bank account? A. Day-Night Cigar Store.

Q. And who else was on the Day-Night Cigar Store with you, if you recall?

A. I think Willie Kyne. My signature was on that because of the fact that Willie Kyne was going into the service.

Q. That is when your signature was placed on there?

A. Well, it wasn't put on there until some time in, I think, of 1945, I don't know the exact date.

Q. Aside from those two accounts, did you have access to any of the other bank accounts with respect to various businesses? A. No, sir.

Q. Now did you maintain any safety deposit boxes in your name with respect to any of the businesses? A. No, sir.

Q. Did you have any access to any safety deposit box with relation to these businesses, that is to say, were you an authorized [1202] entrant to any safety deposit box? A. No, sir.

Q. Now you stated that in addition to the receipts of the Tiny's Waffle Shop and the Menlo Bar that from time to time other funds would be given to you to be placed in the Crocker National Bank? A. Yes, sir.

Q. By whom would those funds be given to you?

A. Well, as I needed them they might be given

(Testimony of Harold H. Maundrell.)

to me by Mr. Remmer or one of the managers of the Menlo Club.

Q. You say as you needed them, was that with respect to the operation of either the Waffle Shop or the Menlo Bar? A. Yes, sir.

Q. From that account did you pay any of the expenses of the Menlo Club? A. Yes, sir.

Q. And upon whose instructions?

A. I would say Mr. Remmer.

Mr. Campbell: I am going to ask to have marked for identification certain exhibits at this time, the first as government's Exhibit 132 for identification, a book consisting of check book stubs, together with certain adding machine tabs, and as 132A for identification a group of some five checks. As 133 for identification, a second group of check stubs, and as 133A for identification a group of 17 checks, together with [1203] document entitled "Office Memorandum for Checks Withdrawn." As 134 for identification a third group of check stubs and as 134A for identification a group of 4 checks. As 135 for identification a fourth group of check stubs, and as 135A for identification a group of 9 cancelled checks. As 136 for identification a fifth book of check stubs, and as 136A for identification a group of 6 cancelled checks. I presume counsel will desire a little time to examine these.

Mr. Avakian: These are documents we have never seen before, your Honor, so it will take a little time.

The Court: We will take a recess for 15 min-

(Testimony of Harold H. Maundrell.)

utes or longer time if necessary, so counsel may examine those records.

(Jury and alternate jurors admonished and recess taken at 2:17 p.m.)

2.48 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, I will show you what has been marked plaintiff's Exhibit 128 for identification, bearing the pencil heading, "Tiny's Restaurant and Menlo Bar 1945," and ask you if you recognize that as a book of accounts which was maintained by you [1204] or under your direction in connection with the operation of those businesses for the year 1945? A. Yes, sir.

Q. Do you recognize this sheet here?

A. No, I don't recognize that.

Mr. Campbell: Pardon me.

(Shows exhibit to counsel.)

Mr. Avakian: It appears, your Honor, there is a loose sheet which was included in the volume

(Testimony of Harold H. Maundrell.)

which neither the defense or the prosecution is able to identify now.

Mr. Campbell: I will have it marked for identification. I will ask that Exhibit 128, consisting of one sheet marked Tiny's Restaurant and Menlo Bar, 1945, be admitted in evidence and I will ask to have this yellow sheet, pencil written with the initials E. R. at the top, marked 128A for identification.

Mr. Avakian: May I ask whether this particular set of records were taken from the box deposited with the clerk?

Mr. Campbell: Yes, it was.

Mr. Avakian: We make our usual objection.

The Court: Objection overruled and 128 admitted in evidence.

Mr. Campbell: At this time also I will produce the last book remaining of those in the custody of the clerk and ask to have it marked for identification next in order, being book entitled "Transit Smoke Shop, 1946."

The Clerk: 137. [1205]

Mr. Avakian: Your Honor, with respect to the proposed exhibit 137 for identification, which has been produced from the box of records deposited here by the defense, we are willing to stipulate it is an authentic document and our objection to it goes only to the grounds previously stated in respect to these documents.

The Court: Do I understand it has been offered?

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Yes, I will offer it in evidence or I can have the witness further identify it.

The Court: Objection overruled and 137 admitted in evidence.

Q. Will you examine this 137, Mr. Maundrell, and state whether or not that is a record kept by you in the course of your duties which you have described, with respect to the various enterprises, or kept under your supervision? A. Yes, sir.

Q. Mr. Maundrell, in relation to the Menlo Club operations, will you state how many poker tables were operated there? A. I believe about 20.

Q. And in that connection will you state, if you know, the manner in which the take from each table of the table rental was arrived at?

A. The floor man in charge of that particular table, they collected the money from each player at the time the allotted time was up. [1206]

Q. Will you describe the allotted times and how the amounts were arrived at to collect from each player?

A. That I don't know at this time. However, there is a book here which has it in here.

Q. One of the books which you have seen?

A. Yes, sir.

Q. Do you recall which particular book it is?

A. Right here, it is in Exhibit 126.

Q. Now will you show me the place. You have called my attention to a pencilled list which has been affixed by Scotch tape to the inside front cover of Exhibit 126, is that correct? A. Yes.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: I will read this if I may: "\$2 limit, 50 cents every 40 minutes; \$4 limit, 50 cents every half hour; \$6 limit, \$1 every 40 minutes; \$10 limit, \$1 every half hour; \$20 limit, \$3 every hour; \$40 limit, \$5 every hour; 5-cent ante poker, 25 cents every half hour. The time is collected as stated."

Q. Now referring to the amounts collected half hour, 40 minutes and hour intervals, was that amount collected from each player in the game?

A. Yes, sir.

Q. And that was collected by the house manager?

A. Yes, sir.

Q. Now at this time, Mr. Maundrell, I am going to show you plaintiff's Exhibit 132 for identification, and ask you if you [1207] recognize this exhibit?

A. Yes, sir.

Q. And what is the book?

A. That is check book of the account of Elmer Remmer and Harold Maundrell in the Crocker National Bank.

Q. Is that the account which you described as being the one in which were placed the receipts of the Menlo Bar and Tiny's Waffle Shop, together with other funds which would be advanced to you for particular purposes?

A. Yes, sir.

Q. Were the entries thereon made by you or made under your direction?

A. Yes, sir.

Mr. Campbell: This will be offered as government's Exhibit 132.

Mr. Avakian: Your Honor, may the record show that that proposed exhibit was produced by the

(Testimony of Harold H. Maundrell.)

prosecution from its own files and we object to that on all the grounds which we have heretofore urged, as records of the Menlo Club which were obtained by the prosecution under a promise to return, which was not kept?

The Court: Objection will be overruled. Exhibit 132 is admitted in evidence.

Q. Now, Mr. Maundrell, I am going to extract at this time certain of the cancelled checks which have heretofore been marked [1208] Exhibit 132A for identification. I show you first a check dated June 15, 1945, check No. 1056, and ask you if that is your signature thereon? A. Yes, sir.

Q. And is that a check drawn by you in the course of the employment which you have described? A. Yes, sir.

Mr. Campbell: I will offer this check in evidence as 132B.

Mr. Avakian: Is that in group marked 132A?

Mr. Campbell: That is check No. 1056.

Mr. Avakian: It is now given a new number, is that correct?

Mr. Campbell: That is correct. I am simply withdrawing certain check from 132A.

Mr. Avakian: Your Honor, we offer the same objection with respect to this proposed exhibit as to Exhibit 132.

The Court: Objection overruled and 132B is admitted in evidence.

Q. Mr. Maundrell, I call your attention to this check of June 15, 1945, payable to the Pacific Gas

(Testimony of Harold H. Maundrell.)

& Electric Company in the amount of \$3800. I hand you government's Exhibit 132 and ask you if you will state for what purpose that particular check was drawn?

A. It was for deposit on Pacific Gas & Electric Company for [1209] Tiny's Cafe, Menlo Club, Menlo Bar.

Q. And can you state whether or not that deposit which was made on June 15, 1945, remained as deposit with the Pacific Gas & Electric Company as of December 31, 1945? A. Yes, sir.

Q. It did? A. I believe so, yes.

Q. Are there any records here in which an entry would be made showing that fact, Mr. Maundrell?

A. I don't know at this time. I wouldn't be able to say.

Q. In what book or books was that deposit entered?

A. That would be Tiny's Waffle Shop.

Q. I show you government's Exhibit 127, which is entitled, "Tiny's Waffle Restaurant," and ask you if you will examine that and state whether or not that deposit was outstanding as of December 31, 1945, and whether or not it was also outstanding as of December 31, 1946?

Mr. Avakian: Your Honor, in the interest of saving time, we object to the question as incompetent, irrelevant and immaterial, having no bearing whatsoever on the question of whether this defendant fraudulently evaded his income tax.

The Court: Let me have the question.

(Testimony of Harold H. Maundrell.)

(Question read.)

The Court: The objection is overruled. Answer the question. [1210]

A. May I have the date of that check?

Q. June 15, 1945.

A. This is the 1946 book.

Q. Will you look at that book and examine to see if that deposit was outstanding as of December 31, 1946?

A. I can't tell from the books whether it was or not.

Q. I call your attention also to 1945 book, plaintiff's Exhibit 128, an entry of this check No. 1056. Are you able to ascertain from that book whether or not it was outstanding as of the dates indicated?

A. Well, to the best of my knowledge I would say yes, it was still in the hands of the Pacific Gas & Electric Company.

Q. As of both dates? A. Yes, sir.

Q. At this time I show you a second check withdrawn from 132A for identification, being check No. 1115, and ask you if that is your signature thereon?

A. Yes, sir.

Q. And was that a check drawn by you in the course of your duties as described by you in your previous testimony? A. Yes, sir.

Mr. Campbell: This will be offered as 132C in evidence.

Mr. Avakian: And to that, your Honor, we make the same objection as to Exhibits 132 and 132B.

(Testimony of Harold H. Maundrell.)

The Court: Same ruling. Admitted in evidence, 132C. [1211]

Q. I hand you plaintiff's Exhibit 132, check stub book, together with 132C, check for \$500, dated July 10, 1945, check No. 1115, payable to Neon Corporation, and ask you for what purpose that check was drawn?

A. That was for a new Neon sign that was erected in front of the Menlo Bar and Cocktail Lounge on the outside of the building.

Q. Can you state upon which book or record an entry was made regarding the purchase of this sign for the Menlo Bar?

A. I would like to see the book of the Menlo Bar, 1945.

Q. You are referring to government's Exhibit 128?

A. 128. It is in government's Exhibit 128, Neon Corporation, \$500.

Q. And was that treated in the books, that is to say, as expenses or capital expenditure?

A. Sign for bar, I imagine, was a capital expenditure.

Q. Would you indicate where?

A. It doesn't show in the book here.

Q. Are there other records here which would indicate that?

A. No, sir. I don't know how the auditor treated it finally.

Q. At this time I am going to show you a further check withdrawn from 132A for identification,

(Testimony of Harold H. Maundrell.)

dated August 18, 1945, No. 1247, and ask you if that is your signature thereon? A. Yes, sir.

Q. And is that a check drawn by you in the course of your official duties as described by you in your previous testimony? [1212]

A. Yes, sir.

Mr. Campbell: This will be offered as government's Exhibit 132D.

Mr. Avakian: Same objection as to the previous one in this series, your Honor.

The Court: Same ruling. Admitted in evidence, 132D.

Q. Will you examine this check, 132D, Fred W. Shell, in amount \$2500, and state for what purpose that check was issued?

A. That check was paid on account of new office that was built at 50 Mason Street.

Q. Who, incidentally, was Fred W. Shell?

A. Contractor.

Q. You say a new office was built. By that do you mean new building or interior construction was done?

A. No, it was the old game room they had there, took out the whole front of the building, took out the old cigar stand and main room and built a whole new office in there, composed of four different rooms.

Q. From what source did you obtain the funds for that purpose?

A. I either received this from Mr. Remmer or the manager of the Menlo Club.

(Testimony of Harold H. Maundrell.)

Mr. Avakian: Objected to, the checks speak for themselves.

The Court: Objection overruled. The answer may stand.

Mr. Avakian: May we have that [1213] stricken?

The Court: The answer may stand.

Q. Now I am going to show you, Mr. Maundrell, plaintiff's Exhibit 133 for identification, and ask you if you recognize that book? A. Yes, sir.

Q. And what is that book?

A. Check book of Elmer Remmer and Harold Maundrell account Crocker National Bank.

Q. That is the same bank account to which you previously testified, is that correct?

A. Yes, sir.

Q. And was maintained by you as part of your duties of your employment which you have described? A. Yes, sir.

Mr. Campbell: I offer this in evidence, 133.

Mr. Avakian: May the record show that the proposed Exhibit 133 was produced by the prosecution from its own records and we object on the grounds heretofore stated with respect to documents obtained from any of these clubs on promise to return and which promise was never kept.

The Court: Objection overruled. 133 admitted in evidence.

Mr. Campbell: At this time I am going to withdraw certain of the checks which have heretofore

(Testimony of Harold H. Maundrell.)

been marked for identification as government's Exhibit 133A for identification. [1214]

Q. At this time I will show you check dated September 13, 1945, No. 1344, and ask you if that is your signature thereon? A. Yes, sir.

Q. And is that check drawn by you in the course of your duties as you have described them?

A. Yes, sir.

Mr. Campbell: This will be offered in evidence as government's Exhibit 133B.

Mr. Avakian: Same objection, your Honor.

The Court: Same ruling. Exhibit 133B is admitted.

Q. Mr. Maundrell, I am going to show you a group of checks, all of which have been withdrawn from 133A for identification, and ask you to examine them and state whether or not those are your signatures appearing thereon and if so, if each of these checks was drawn in connection with the duties of your employment as you have described it? A. Yes, sir.

Q. Each of these was drawn in connection with your duties? A. Yes, sir.

Q. I also show you a document heading of the Crocker First National Bank, Office Memorandum for Checks Withdrawn, referring to check 1565, name of maker, and ask you if you recognize that document?

A. I don't remember this document but I do remember the check.

Q. Do you recall whether or not you withdrew

(Testimony of Harold H. Maundrell.)
from the bank prior [1215] to the receipt of your
monthly statement that particular check?

A. I don't remember that.

Mr. Campbell: I am going to offer in evidence
the following checks to take the numbers in the
133 series as 133C, check No. 1396; as 133D check
No. 1401; as 133E check 1536; as 133F check 1537;
as 133G check 1538; as 133H check 1540; as 133I
check 1566; as 133J check 1568; as 133K check No.
1569; as 133L check No. 1572; as 133M check No.
1574; as 133N check No. 1575, and as 133O check
No. 1576. Offered in evidence.

Mr. Avakian: As to all those, your Honor, in
addition to the objections we have been making to
all of these documents offered in these series, I
wish to make the further objection that they are
incompetent, irrelevant and immaterial to the issue
in this case, fraudulent evasion of income tax by
this defendant during the years mentioned.

The Court: Objection overruled and exhibits
133C to 133O inclusive are admitted in evidence.

Q. Now drawing your attention first to check
No. 1344, payable to the California Jockey Club,
in amount of \$108, dated September 13, 1945, will
you state for what that check was drawn, Exhibit
133B?

A. For the purchase of a box at the California
Jockey Club.

Q. By a box you are referring to a box for
viewing the races, is that correct?

A. Yes, sir. [1216]

(Testimony of Harold H. Maundrell.)

Q. And for whom was that purchased?

A. Well, it was purchased for the employees and for the members principally and friends of the members of the Menlo Club. I don't know who occupied it.

Q. Showing you check 133C, No. 1396, dated October 2, 1945, payable to Tinneman Bridgford Company, in the sum of \$296.06, will you state for what purpose that check was drawn?

A. That was insurance check. It was drawn for Mr. Remmer's account.

Q. Drawn from Mr. Remmer's account?

A. For Mr. Remmer's account. It was drawn out of the Crocker National Bank.

Q. Was that in payment of personal insurance?

A. Yes, sir.

Q. For Mr. Remmer? A. Yes, sir.

Q. I show you Exhibit 133D, No. 1401, dated October 4, 1945, payable to Fred W. Shell, \$1050, will you state for what purpose that check was drawn?

A. That was another payment to Mr. Shell for work done at 50 Mason Street.

Q. For constructing the offices there?

A. Yes, sir.

Q. And do you recall the source of the funds which were used for this purpose? [1217]

A. The Crocker National Bank.

Q. And where did you obtain the funds, from what business or enterprise?

A. That check I would get the money from

(Testimony of Harold H. Maundrell.)

either Mr. Remmer or the manager of the Menlo Club, deposit it in the bank and then draw a check against it.

Q. Were those offices occupied by the Menlo Club? A. They were the main offices.

Q. For all of the enterprises? A. Yes, sir.

Q. And as to those improvements upon what record or records of what enterprises was that set up?

A. Well, it was set up principally for Mr. Remmer's private office and also for the office of the Day-Night Cigar and 110 Eddy.

Q. The B & R Smoke Shoppe?

A. B & R Smoke, Tiny's Waffle Shop, Menlo Bar.

Q. Which of those enterprises were actually located there?

A. Well, the only enterprise itself located there was the back room, about ten feet wide.

Q. What enterprise was in the back room?

A. That was the B & R Smoke Shoppe.

Q. I show you plaintiff's Exhibit 133E, check No. 1536, dated November 12, 1945, payable to Fred W. Shell, in amount of \$2,303, was that also drawn in connection with the construction [1218] work there?

A. I believe that was the final check given Mr. Shell.

Q. That was the same construction work to which you have referred? A. Yes.

(Testimony of Harold H. Maundrell.)

Q. I show you Exhibit 133F, No. 1537, dated November 12, 1945, in amount \$1075.44, Saltzman Stanley, and ask for what purpose that check was drawn?

A. That was for new office equipment.

Q. At the same location, 52 Mason Street?

A. Yes, sir.

Q. What was the source of funds from which you drew that check?

A. Well, that was—all those funds were given to me by either the manager of the Menlo Club or Mr. Remmer.

Q. Incidentally, in what form did you receive the funds in connection with that construction and with the office equipment? A. Cash.

Q. Did you receive any of it by way of check?

A. No, sir.

Q. I show you plaintiff's Exhibit 133G, check No. 1538, dated November 16, 1945, payable to Lou Brice, in amount of \$6,000, and ask you for what purpose that check was drawn?

A. Well, that was given to Mr. Brice as payment on night club [1219] Mr. Remmer had an interest in in New York.

Q. What was the source of the funds on which you drew this check?

A. The money was given to me in cash by either Mr. Remmer or the manager of the Menlo Club. If Mr. Remmer wasn't around, I always got the money from the manager.

Q. And this money was given to you in cash?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. I will ask you whether or not a further check for \$6,000 was also drawn for that purpose?

A. Yes, sir.

Q. And I will ask you to refer to the record, particularly check No. 1565, and ask you to state the amount of that check and to whom drawn?

A. Six thousand.

Q. On what date?

A. November 26th. Matty Silverman.

Q. Will you state whether or not Matty Silverman was a partner of Lou Brice in the New York night club?

Mr. Gillen: Objected to as leading and suggestive.

A. Yes.

The Court: Yes.

Q. Who is Matty Silverman?

A. He was connected with Lou Brice also in the club in New York. [1220]

Q. Now directing your attention to a portion of government's Exhibit 133A for identification, a memorandum of the Crocker First National Bank as to check overdrawn, do you recall at this time whether or not you obtained that cancelled check from the bank on or about December 11, 1945?

A. No, I do not.

Mr. Gillen: What check is that?

Mr. Campbell: The last check referred to, No. 1565.

Q. I call your attention to plaintiff's Exhibit

(Testimony of Harold H. Maundrell.)

133H, check No. 150, dated November 20, 1945, payable to John Hagner, \$66.45, and ask you for what purpose that check was drawn?

A. It was for carpenter work.

Q. Carpenter work where?

A. At the new office, 50 Mason Street.

Q. That was part of the construction cost there?

A. Yes, sir.

Q. Who supplied you with that money?

A. Got it from the same source.

Q. That is to say, from either Mr. Remmer or the manager of the Menlo Club? A. Yes, sir.

Q. I call your attention to check No. 1566, Exhibit 133I, payable to Habenicht & Howland, \$22.87, and ask you if that check was also used for the same purpose? A. Yes, sir.

Q. Was it obtained from the same source?

A. Yes, sir. May I make a statement? [1221]

Mr. Campbell: I think not.

The Court: I think you had better just answer each question. If you want to explain any answer—

Mr. Avakian: I believe that is what the witness wishes.

The Court: We will find out from the witness. Do you want to explain your answer?

A. He asked me every time if the checks were from the same source. They are, but I don't go each time and get \$22 or \$30. I will get a larger amount.

(Testimony of Harold H. Maundrell.)

Q. I understand and then drew these checks against it? A. That's right.

Q. I am going to call your attention to a group of checks which are 133J to 133O inclusive, the first five of which are all dated November 2, 1945, Nos. 1568, 1569, 1572, 1574 and 1575, and the last being 133O, dated November 28, 1945, No. 1576, and ask you to examine those and state whether or not those checks also represent costs of the improvements made at 52 Mason Street in regard to the construction of the new office?

A. Check 1568 Tinneman Bridgford for \$46.50 was paid for insurance for Mrs. Remmer.

Q. Let us withdraw that. That is 133J. Now as to the others?

A. Check 1569 made to H. C. Evans & Company for \$920, was for equipment to be used in the Menlo Club.

Q. That is 133K.

A. Check 1572 to the American District Telephone Company for [1222] \$340.85 was to pay for putting in a complete burglary alarm system in the new offices.

Q. That is 133L.

A. Check 1574, John Hagen, \$76.46, was for further office repairs at 50 Mason Street.

Q. That is 133M.

A. Check 1575 to Pacific Gas & Electric Company for \$650, was for deposit.

Q. Now did that deposit remain with the Pacific Gas & Electric Company—

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. —at the end of 1945 and end of 1946?

A. Yes, sir.

Mr. Gillen: May the answer be stricken until we can object?

The Court: Yes, sir. The answer will go out.

Mr. Gillen: We object on the ground it is completely incompetent, irrelevant and immaterial to the issue in this case of whether there was fraudulent tax evasion.

The Court: Objection overruled. The answer may stand.

A. Check No. 1576 to John Hagen for \$55.06 was for further office repairs. He worked around there for about three or four weeks.

Q. Referring to 1330. Now as to all of these checks which you have just described, what was the source of the funds from [1223] which you drew the checks?

Mr. Gillen: Objected to as already asked and answered.

The Court: You may answer the question.

A. I drew the money from either the manager of the Menlo Club or Mr. Remmer.

Q. At this time I am going to show you plaintiff's Exhibit 134 for identification and ask you if you recognize that book? A. Yes, sir.

Q. And what is that book?

A. That is a check book of the Elmer Remmer and Harold Maundrell account at the Crocker National Bank.

Q. And maintained by you in the course of

(Testimony of Harold H. Maundrell.)

your employment as you have previously described?

A. Yes, sir.

Mr. Campbell: I offer 134 in evidence.

Mr. Avakian: May the record show that this book was likewise produced from the prosecution's own records and we make the same objection we have been making right along to these records.

The Court: Objection overruled and 134 is admitted in evidence.

Q. I am going to show you plaintiff's Exhibit 134A for identification, consisting of some 4 cancelled checks, and ask you if those are your signatures appearing thereon? A. Yes, sir. [1224]

Q. Were those checks drawn by you in the course of the official duties which you have described? A. Yes, sir.

Mr. Campbell: I am going to offer these checks in evidence as exhibits 134A, 134B, 134C and 134D respectively, checks Nos. 1799, 1805, 1811 and 1874.

Mr. Avakian: We make the same objection as to Exhibit 134 and the additional objection that the expenditures represented by these checks are incompetent, irrelevant and immaterial to the issues in this case.

The Court: Objection overruled. Exhibits 134A, 134B, 134C and 134D are each admitted in evidence.

Q. Showing you Exhibit 134A, check dated February 6, 1946, payable to St. Francis Hotel, \$33.21, will you state for what purpose that check was drawn? A. For Mr. Remmer's account.

Q. For his personal account? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. What was the source of the funds with which you paid that check?

A. The Crocker National Bank.

Q. Where did you obtain the funds from which you drew that check?

Mr. Avakian: Your Honor, that has been asked and answered. The witness has testified that in the Crocker National Bank account he deposited regularly the proceeds of certain of [1225] these businesses and from time to time he obtained money from Mr. Remmer or the manager of the Menlo Club, additional funds, and I object to it, being repetition.

The Court: Objection will be overruled.

Q. What is your answer?

A. Well, the funds were derived from either the manager of the Menlo Club or Mr. Remmer.

Q. In what form? A. Cash.

Q. I show you 134B, check in favor of the California Jockey Club, No. 1805, in amount of \$108. Is that expenditure similar to that which you described regarding another check in the same amount?

Mr. Gillen: Objected to as calling for conclusion.

Mr. Campbell: Very well.

Q. What is the check and for what purpose was it drawn and what was the source of the funds?

A. This was drawn for the season, this was for a later season. The other was for 1945 and this

(Testimony of Harold H. Maundrell.)

is for 1946; it was drawn for the California Jockey Club for box.

Q. And the source of the funds upon which that check was drawn?

A. Crocker National Bank.

Q. Well, who supplied the funds from which you drew this check from the Crocker National Bank?

Mr. Gillen: Same objection. [1226]

The Court: Same ruling.

A. Either the manager or Mr. Remmer.

Q. Calling your attention to 134C, check dated February 15, 1946, No. 1811, in the amount of \$830, payable to Bernhards, I will ask you for what purpose that check was drawn?

A. Bernhards Furniture Company on Mission Street in San Francisco.

Q. For what purpose?

A. That was, I believe, for a new carpet and booths for the Menlo Bar.

Q. And what was the source of the money against which that check was drawn?

Mr. Avakian: Same objection.

The Court: Same ruling.

A. I received the money for payment of this check from either the manager of the Menlo Club or Mr. Remmer.

Q. I direct your attention to Plaintiff's Exhibit 134D, check No. 1874, dated March 6, 1946, to W. C. Finley Company, in amount of \$644, and ask you for what purpose that check was drawn?

(Testimony of Harold H. Maundrell.)

A. That was for office furniture.

Q. At what location?

A. At 50 Mason Street.

Q. And what was the source of the money in the Crocker Bank against which you drew that check? [1227]

Mr. Avakian: Same objection.

The Court: Same ruling.

A. I received the money either from one of the managers of the Menlo Club or Mr. Remmer.

Q. And in what form? A. Cash.

Q. At this time I am going to show you plaintiff's Exhibit 35 for identification and ask you if you recognize that book? A. Yes, I do.

Q. What is that book?

A. That is a check book of the account of Harold H. Maundrell and Elmer Remmer for the Crocker National Bank, San Francisco.

Q. That is the same account which you have previously identified? A. Yes, sir.

Mr. Campbell: I offer this in evidence as Exhibit 135.

Mr. Avakian: Your Honor, we make the same objection to Exhibit 135 which I would like to have the record show likewise was produced by the prosecution from its own records, as we have made to 134, 133 and 132.

The Court: Same ruling. Exhibit 135 admitted in evidence.

Q. Mr. Maundrell, I am going to show you a group of checks marked 135A for identification,

(Testimony of Harold H. Maundrell.)

and ask you if that is your signature as to each one of those checks? A. Yes, sir. [1228]

Q. And were each of those checks drawn by you in the course of the duties which you have described as being your official duties in your association with Mr. Remmer? A. Yes, sir.

Mr. Campbell: I will offer these checks in evidence in the following order: 135A check No. 1929; 135B check No. 1954; 135C check No. 1955; 135D check No. 1981; 135E check No. 1982; 135F check No. 1986; 135G check No. 2037; 135H check No. 2085; 135I check No. 2106.

Mr. Avakian: Your Honor, we make the same objection to that group as to Exhibit 135, and the additional objection that the expenditures represented by those checks are incompetent, irrelevant and immaterial as they would not indicate anything with respect to the issue in this case of fraudulent tax evasion.

The Court: Objection overruled and exhibits 135A to 135I inclusive are admitted in evidence.

Mr. Avakian: Would your Honor care to look at the checks before ruling?

The Court: No, I don't think so. The ruling will stand.

Q. I am going to show you, Mr. Maundrell, plaintiff's Exhibit 136 for identification, and ask you if you recognize that exhibit?

A. Yes, I do.

Q. What is that? [1229]

A. That is a check book on the Crocker Na-

(Testimony of Harold H. Maundrell.)

tional Bank of Elmer Remmer account and Harold Maundrell.

Q. That is the same account to which you have previously referred? A. Yes, sir.

Mr. Campbell: This exhibit will be offered in evidence as 136.

Mr. Avakian: May the record show that that likewise was produced by the government from its records and we make the same objection which we have been making to other documents which have been presented here by the government, which were obtained on promise to return, which was not kept.

The Court: Objection is overruled. 136 is admitted in evidence.

Q. Mr. Maundrell, I am going to show you a group of checks which have heretofore been marked 136A for identification, and I will ask you to examine those and state whether or not that is your signature appearing on each of those checks? A. Yes, sir.

Q. Were those checks drawn by you upon the account at the Crocker National Bank which you have identified? A. Yes, sir.

Q. Were those checks drawn by you in the course of the employment which you have described? A. Yes, sir. [1230]

Mr. Campbell: These checks will be offered in evidence as follows: As 136A check No. 2226; as 136B check No. 2251; as 136C check No. 2311; as 136D check No. 2426; as 136E check No. 2436; as 136F check No. 2465.

(Testimony of Harold H. Maundrell.)

Mr. Avakian: We object to this group of exhibits on the same grounds as the objection made to 136, and the additional objection that these checks are incompetent, irrelevant and immaterial because they have no bearing on the issue of fraudulent tax evasion, and may I respectfully request your Honor to examine the checks.

The Court: Objections will be overruled and exhibits are admitted in evidence, 136A to 136F inclusive.

(Jury and alternate jurors admonished and court recessed at 4:00 p.m.) [1231]

December 21, 1951, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

(Absent: Messrs. Lohse, Pike and McDonald.)

MR. MAUNDRELL

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Now, Mr. Maundrell, at the close of yesterday's session we were going into the matter of certain checks which you have identified as being checks issued by you in the course of your employment. At this time I am going to refer you to a series of checks which bear the markings 135A to 135I

(Testimony of Harold H. Maundrell.)

inclusive, and I am going to hand you plaintiff's Exhibit No. 135, the check stub book which you have previously identified as being on the Maundrell-Remmer account, together with plaintiff's Exhibit 126, which you have identified as a record of the Menlo Club. I first direct your attention to plaintiff's Exhibit 135A, a check to John Hagen, dated March 22, 1946, in amount of \$178.71, and ask you for what purpose that check was issued?

A. That was for carpenter work that was done at 50 Mason Street.

Q. At the offices? A. Yes, sir.

Q. I notice you refer to the ledger which contains an account of expenses of the Menlo Club of 1946, do you fail to find that check listed there?

The Court: What exhibit number is that ledger? [1232]

Mr. Campbell: That is Exhibit 126.

A. This is the Menlo Club. I have to have Tiny's Waffle Shop.

Q. I hand you government's Exhibit 127, purporting to be a ledger of Tiny's Restaurant, 1946.

A. That was for repair work done at Mason Street, as an expense.

Q. And how did it happen that that was charged on the books of Tiny's restaurant?

A. Well, that 50 Mason Street was the headquarters and main office for Tiny's Restaurant and the Menlo Club and the Menlo Bar. That was the head office there.

(Testimony of Harold H. Maundrell.)

Q. None of those, however, were located on the premises of 50 Mason Street, were they?

A. No, sir.

Mr. Avakian: May I ask the answer be stricken for the purpose of objection?

The Court: Yes, sir.

Mr. Avakian: Objected to as incompetent, irrelevant and immaterial whether the main office is located on the same premises or other premises. He has testified it was the main office of that enterprise against which he charged it, so the location would be immaterial.

The Court: Objection overruled. The answer will stand.

Q. Did you make any entry in connection with that expenditure on the books of all the other enterprises which you say had their main [1233] office there? A. Yes, sir.

Q. Will you examine the Menlo Club books and state whether or not any entry was made with respect to that expenditure?

A. No, no entries were made in the Menlo Club book itself.

Q. And is that true of the other enterprises?

A. All expenses for 50 Mason Street were entered into the book of the Tiny's Waffle Shop and the Menlo Club Bar.

Q. Can you state the nature of repairs you refer to there?

A. I believe this was for fixing up the back room and a lot of carpenter work was done in there.

(Testimony of Harold H. Maundrell.)

Q. Was that in connection with the construction of the offices there which you have referred to in your testimony? A. Yes, sir.

Q. Now I refer you to plaintiff's Exhibit 135B, check dated March 23, 1946, payable to Bullock & Jones, in amount of \$569.44, and ask you for what purpose that check was issued?

A. Well, that was issued for Mr. Remmer's account to Bullock & Jones and if my memory serves me right, a good portion of that was for merchandise orders that he purchased.

Q. Was that a personal account or an account of one of the enterprises?

A. This was a personal account at the time.

Q. And was it so charged on the books?

A. Yes, sir.

Q. I call your attention to plaintiff's Exhibit 135C, a check [1234] in the amount of \$100.01, issued to the Transcontinental & Western Air Incorporated, dated March 23, 1946, and I will ask you for what purpose that check was issued?

A. That was to pay transportation.

Q. For whom? A. For Mr. Remmer.

Q. I show you plaintiff's Exhibit No. 135D, check dated March 31, 1946, No. 1981, in the amount of \$79.60, to United Studios, and ask you for what purpose that check was issued?

A. That was for electric work that was done on the new offices at 50 Mason Street.

Q. And was that paid from funds furnished to you as you have heretofore described?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. I call your attention to plaintiff's Exhibit 135E, check dated March 31, 1946, No. 1982, payable to Saltzman Stanley Company in amount of \$208.13, do you know for what purpose that check was issued?

A. I believe that was for an icebox that was put in the office at 50 Mason Street.

Q. And will you state whether or not that was paid from funds which were furnished you in the same manner in which you have previously described?

A. Yes, sir.

Q. I call your attention to plaintiff's Exhibit 135F, a check [1235] dated April 5, 1946, No. 1986, payable to Edward M. Dobkin, in amount of \$1500, and ask you for what purpose that check was issued?

A. This check was issued at Mr. Remmer's request.

Q. And who provided the funds against which that check was issued?

A. It came from the same source as before.

Q. That is to say, either Mr. Remmer or from the manager of the Menlo Club?

A. Yes, sir.

Q. And how was that entered on the books?

A. Charged against Mr. Remmer.

Q. Mr. Remmer's personal account?

A. Yes, sir.

Q. Do you know Edward M. Dobkin?

A. No, I don't. I remember the check at the time because he owed somebody some money and asked me to make out a check for \$1500.

(Testimony of Harold H. Maundrell.)

Q. Do you know anything about the transaction which this represents? A. No, sir.

Q. I call your attention to plaintiff's Exhibit 135G, check dated April 19, 1946, No. 2037, payable to Gene Murphy, in amount of \$200, and ask you for what purpose that check was issued? [1236]

A. Well, that was a donation to the campaign fund they had over in Oakland, going to change some statute on the books.

Q. And what was the source of the money on which you drew this check? A. Same source.

Q. As the other checks which you have described? A. Yes, sir.

Q. I draw your attention to plaintiff's Exhibit 135H, dated May 10, 1946, No. 2085, payable to J. W. Sneed, in amount of \$60.00, and ask you for what purpose that check was drawn?

A. That was drawn for Mr. Remmer's account, personal account.

Q. And so charged on the books?

A. Yes, sir.

Q. Do you know who J. W. Sneed is?

A. No, sir.

Q. Or do you know anything about the transaction which this represents? A. No, I do not.

Q. And what was the source of funds against which this check was drawn?

Mr. Avakian: Your Honor, to save time we are willing to stipulate as to all checks in the 135-136 series, that the source of the funds in the bank account—

(Testimony of Harold H. Maundrell.)

The Court: I think these offers to stipulate should be made privately. [1237]

Mr. Avakian: We will be glad to do it in any way you suggest, in order to save time.

The Court: If counsel wants to consider the stipulation, all right, but I do not think it should be made openly.

Mr. Campbell: As to that stipulation, I will accept it in the interest of time. That the source of funds in that bank account were cash given to him either by Mr. Remmer personally or by the manager of the Menlo Club.

Mr. Avakian: Or deposit of receipts of the business known as Tiny's Restaurant.

Mr. Campbell: No, I will not say so.

Mr. Avakian: So we are getting into difficulties. May we ask that instead of saying the same source, the witness state what the source is.

The Court: I am not going to direct counsel how to try the case.

Mr. Avakian: No, sir, but the same source means nothing unless it is related to something and we would like to make that request.

The Court: Very well, but I still say I am not going to instruct counsel as to the manner of presenting his case. If you have objections, I will entertain them.

Q. What was the source of the funds on which the Sneed check was drawn? [1238]

A. Same source I previously stated.

Q. What was that source?

(Testimony of Harold H. Maundrell.)

A. It was funds that were given to me either by the manager or Mr. Remmer.

Q. By manager, you are referring to the manager of what business?

A. Of the Menlo Club.

Q. As to all the checks which you have identified here, are the source of any of those funds receipts coming into your hands from Tiny's Waffle Shop or the Menlo Bar?

A. The receipts I received from Tiny's Waffle Shop or the Menlo Bar were not enough to pay the expenses of the bar and Tiny's Waffle Shop and also pay the rent, so from time to time I had to go to the Manager of the Menlo Club and draw from them, in order to replenish my bank account.

Q. Yes, and as I understood you also from time to time funds would be given to you and you would be instructed to issue checks, is that correct?

A. Yes, sir.

Q. Now calling your attention to plaintiff's Exhibit 135I, dated May 10, 1946, No. 2106, drawn to S. Peterson & Sons, in amount of \$232.64, I will ask you for what purpose that check was drawn?

A. May I have the check book, please?

Q. You have the check book before you, do you not? [1239]

A. Oh, I beg your pardon. That was for installing of a lavatory for the employees.

Q. At what location?

A. This was at, I believe, 18 Turk Street.

Q. And what business was located there?

A. The Menlo Bar and Cocktail Lounge.

(Testimony of Harold H. Maundrell.)

Q. And from what source did you receive these funds?

Mr. Avakian: Just a minute. Could we have permission to question the witness on voir dire as to his knowledge regarding this matter, so we can make an objection?

The Court: No.

Mr. Avakian: It hasn't been established he had knowledge of this particular item.

The Court: I can't see the necessity of such examination at this time. You can take it up on cross-examination.

Mr. Avakian: May the record show the request?

Q. What was the source of funds from which this check was paid?

A. Same source as previously stated.

Q. That is to say, from either Mr. Remmer or the manager of the Menlo Club?

A. It is out of funds of the Crocker National Bank.

Q. I know, but where were the funds obtained which were placed in the Crocker National Bank?

A. The funds for that particular bill were given to me by [1240] either the manager of the Menlo Club or Mr. Remmer.

Q. At this time I am going to hand you Exhibit 136, stub book which you have previously identified, and I call your attention to a group of checks which are numbered 136A to 136F inclusive, and I first direct your attention to a check No. 136A which is dated June 15, 1946, No. 2226, payable to

(Testimony of Harold H. Maundrell.)

S. Peterson & Sons, in the amount of \$356.90, and ask you for what purpose that check was issued?

A. That was issued for the installation of a new bar at 18 Turk Street.

Q. That is the Menlo Bar? A. Yes, sir.

Q. What was the source of the funds against which you issued that check?

A. This is dated June 15, 1946. On or about this date I received the funds from either Mr. Kyne or the manager of the Menlo Club. I am not quite sure as to what time Mr. Kyne started taking over the money, but it was on or about this time and from then on I received the money from Mr. Kyne.

Q. Rather than Mr. Remmer?

A. Yes, he had charge of the money at that time.

Q. Now will you refer to the next of the series, 136B, check dated June 24, 1946, No. 2251, to United Studios, in the amount of \$105. Will you state for what purpose that check was issued?

A. That was for installation of Neon tubing in the bar at 18 [1241] Turk Street, the Menlo Bar.

Q. What was the source of the funds from which that was issued?

A. Either the manager or to the best of my knowledge at this moment from Willie Kyne.

Q. And when you state the manager in each instance, do you refer to the manager of the Menlo Club? A. Yes, sir.

Q. Who was that that time?

A. Oscar Nelson.

(Testimony of Harold H. Maundrell.)

Q. I direct your attention to plaintiff's Exhibit 136C, dated July 3, 1946, No. 2311, payable to cash, in the amount of \$126.40. Will you state for what purpose that check was issued? I call your attention also to the endorsement, S. Peterson & Son.

A. The endorsement on the check is William E. Kyne.

Q. For what purpose was that issue?

A. That was buying an adding machine.

Q. For use in connection with what business or premises?

A. For use of the Menlo Club, Tiny's Waffle Shop and the Menlo Bar. I might state that Mr. Kyne bought this machine and paid cash for it——

Q. That was reimbursement?

A. Beg pardon.

Q. Was that check to reimburse him? [1242]

A. Yes, sir.

Q. What was the source of the funds against which you issued that check?

A. The funds were supplied me by Mr. Kyne or the manager.

Q. I call your attention to plaintiff's Exhibit 136D, check No. 2426, dated August 30, 1946, payable to the United Studios in amount of \$105, and ask you for what purpose that check was issued?

A. That was for electrical work that was completed in the Menlo Bar on Turk Street.

Q. And the source of the funds from which it was drawn?

A. Either Mr. Kyne or the manager of the Club.

(Testimony of Harold H. Maundrell.)

Q. Of the Menlo Club? A. Yes, sir.

Mr. Gillen: There is another item of \$105, Exhibit 136B, I would like to know the date of that check.

Mr. Campbell: The Exhibit 136B is dated June 24, 1946.

Mr. Gillen: And this is August 30th, for \$105, the same Studio?

Mr. Campbell: Yes.

Q. I call your attention to plaintiff's Exhibit 136E, a check dated September 6, 1946, No. 2436, payable to B. & H. Refrigeration Service, in amount of \$276.89, and I will ask you for what purpose that check was issued? Do you find that check, Mr. Maundrell? [1243]

A. I do not find it at the moment.

Q. The book you are examining is plaintiff's No. 127. Are you looking under date of September 6th, check No. 2436?

A. I find August 30th, check 2439.

Q. In that connection, on August 30th, check 2439, to whom does it show that check was issued, check No. 2439?

A. It was issued for payment of the bar.

Q. To whom? A. It doesn't show here.

Q. And in what amount?

A. It doesn't show. Just shows bar check.

Q. It doesn't show how much it was issued for?

A. No, sir.

Q. Calling your attention to the fact that in government's Exhibit 136, check No. 2439 is dated

(Testimony of Harold H. Maundrell.)

September 6, 1946, and is payable to the California General Linen Company?

A. That is a bar check, linen supplies.

Q. But in the ledger to which you refer it is shown under an August date, is it not?

A. That's right.

Q. Will you examine in government's Exhibit 136 the stub of that check No. 2439?

A. Date September 6th.

Q. Now will you refer back to the exhibit which you have in your hand, which is check [1244] No. 2436.

A. Yes, sir.

Q. I direct your attention to the fact that in the check stub, plaintiff's Exhibit 136, it also is dated September 6, 1946, payable to B. & H. Refrigeration Service, in amount of \$276.89, which is the same payee and same amount as set forth on government's Exhibit 136E. Are you able to find that in the ledger, government's Exhibit 127, of Tiny's Restaurant?

A. No, I don't find it at this time.

Q. Very well. Do you recall for what that check was issued?

A. I believe that was issued for—it was a monthly service charge and installation of a new unit which was ordered in August for the bar on Turk Street, the Menlo Bar.

Q. And what was the source of the funds from which that was paid?

A. Either from Mr. Kyne or from the manager of the Club.

(Testimony of Harold H. Maundrell.)

Q. The Menlo Club? A. Yes, sir.

Q. I call your attention to plaintiff's Exhibit 136F, check dated September 12, 1946, check No. 2465, payable to B. & H. Refrigeration Service, in amount of \$322.27, and ask you for what purpose that was issued?

A. That was also for refrigeration service on the bar, Menlo Bar.

Q. Wasn't that for a complete new unit?

A. Well, it is a new unit. There are four or five bills for [1245] the new bar installation that we put into the bar.

Q. Was that the purpose of that check?

A. Yes, sir.

Q. Is that entered on the ledger which you hold in your hand, government's Exhibit 126?

A. Yes, sir, charged to the bar.

Q. And as an expense?

A. Not on the ledger here.

Q. How was it charged on the ledger?

A. Just to the bar.

Q. Well, will you state whether or not it is shown in those books as an expense or as an investment, capital investment?

A. I think it was charged to capital investment.

Q. Will you point to me where it is so charged?

A. May I have the ledger of the Menlo Bar?

Q. I hand you government's Exhibit 128, Menlo Bar of 1946.

A. May I see the last two checks, please?

(Testimony of Harold H. Maundrell.)

Q. I am handing to you government's Exhibits 136E and 136F.

A. Check No. 2465, dated September 12th, was charged as repairs and replacements.

Q. Yes. That is Exhibit 136F?

A. That's right.

Q. All right, sir.

Mr. Gillen: I assume that would be the Menlo Club that was charged to? [1246]

A. The Menlo Club Bar.

Mr. Gillen: Rather the Menlo Bar I meant to say.

Q. Do you find the other check on the Menlo Club bar which you are examining; that is to say, 136E?

A. No, I don't find it charged to the bar.

Q. Now with regard to the further operation of the Menlo Club, Mr. Maundrell, do you recall who was the first manager of the Menlo Club after you came to San Francisco and accepted the employment in connection with this enterprise?

A. Masse Ditto.

Q. And how long did Mr. Ditto remain as manager?

A. Well, it was up until about the first of the year, 1946.

Q. And who succeeded Mr. Ditto as manager?

A. Mr. Nelson.

Q. You refer to Mr. Oscar Nelson?

A. Yes, sir.

Q. Did he remain manager throughout 1936?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. Now, during the time that Mr. Ditto was the manager what, if anything, was done with the daily receipts of the Menlo Club?

A. Well, Mr. Ditto kept them in the safe over at the Menlo Club and at times he would bring them over to 50 Mason and they were deposited in the safe at 52 Mason Street.

Q. 52 Mason Street was the warehouse, was it not?

A. Yes, and a small office in the [1247] front room.

Q. And the safe was maintained in those premises? A. Yes, sir.

Q. At 52 Mason Street? A. Yes, sir.

Q. Now in order that we understand the physical set-up at 50 and 52 Mason Street, could entrance be obtained from one premise into the other without having to go out to the street?

A. Yes, sir. There was a door from the front office of 50 Mason Street directly into the front office of 52 Mason Street.

Q. And you refer to the front office at 50 Mason Street, was that the front of the B & R Smoke Shoppe? A. Yes, sir.

Q. And was the location of the cigar store which Mr. Kyne and Mr. Lando described?

(Testimony of Harold H. Maundrell.)

A. The same location.

Q. Now you say at times Mr. Ditto kept the money at the Club, is that correct?

A. Yes, sir.

Q. There was a safe there? A. Yes, sir.

Q. What then was done with the money? To whom was the money delivered?

A. I beg your pardon?

Q. To whom did Mr. Ditto deliver the money?

A. When he came to 50 Mason Street with it, he would give it [1248] to Mr. Remmer, or at times when Mr. Remmer wasn't in, I would put the money in the safe.

Q. And in what manner was the money brought there? That is to say, was it in a package or envelope or how?

A. Yes, it was usually in an envelope.

Q. And on the occasions, while Mr. Ditto was manager and he brought the money over and it was handed to you, did you on those occasions count the money? A. No, sir.

Q. Will you state whether or not the envelope in which the money was brought was sealed or unsealed? A. Sealed.

Q. And when the envelope would be handed to you, what would you do with it?

A. I would give it to Mr. Remmer if he was present, or put it in the safe if he wasn't there.

Q. What subsequently would happen to the envelope containing the money, do you know?

(Testimony of Harold H. Maundrell.)

A. Mr. Remmer would take it and put it in—he had a private box in the safe.

Q. In regard to that safe, was there more than one box in that safe? A. Yes, sir.

Q. How many?

A. Well, 12 small boxes and there was one box built across the [1249] top of the safe.

Q. How large was the large box you refer to?

A. It was about 6 to 8 inches in height, about maybe 14 inches wide by 12 inches deep.

Q. You say 8 inches in height and then you say 12 inches deep?

A. In width, maybe 14 inches in width.

Q. And how far in length?

A. Well, that is the length. In depth, going back, it was about 12 inches.

Q. And how high was it, did you say?

A. About 8 inches.

Q. Now did you have access to that box?

A. No, sir.

Q. Will you state whether or not that was a locked box? A. Had a combination lock on it.

Q. On the box itself? A. Yes, sir.

Q. Will you state whether or not that was in addition to the combination on the safe itself?

A. Yes, sir.

Q. Did you have the combination to that box?

A. Not the box, no.

Q. Simply to the safe? A. Yes, sir.

Q. So that, in the event Mr. Remmer was not there, when Mr. [1250] Ditto brought the receipts,

(Testimony of Harold H. Maundrell.)

where would you put those in the safe until you turned them over to Mr. Remmer?

A. Well, there were about four or five empty boxes in the safe. I would utilize one of those boxes.

Q. Until such time as you turned the receipts over to Mr. Remmer? A. Yes, sir.

Q. After Mr. Ditto left there, you say the end of 1945 or beginning of 1946—incidentally, that was by reason of illness, was it not? A. Yes, sir.

Q. And Oscar Nelson became manager of the Menlo Club, did that same arrangement continue?

A. Well, Mr. Nelson, during the times he was there, kept the money most of the time in his own safe in the Menlo Club.

Q. What would he do with it after he put it in his own safe? A. I don't know.

Q. At any rate, it was not brought to you?

A. No, sir.

Q. How long did that continue?

A. That continued until such time as Mr. Kyne came back from the armed services in '46. I would say until somewhere around the middle of June.

Q. What change was made in the arrangement at that time?

A. Well, Mr. Kyne took care of [1251] the money.

Q. You say he took care of the money. Did he then manage the Menlo Club?

A. No, he wasn't the manager. Mr. Nelson was

(Testimony of Harold H. Maundrell.)

the manager but Mr. Kyne had charge of the receipts.

Q. Well, do you know whether or not Mr. Nelson delivered the receipts to Mr. Kyne?

A. Well, Mr. Kyne either received the receipts from Mr. Nelson or in the morning he received them from the day manager. Mr. Nelson didn't arrive until late afternoon. He worked evenings.

Q. You were present on such occasions?

A. I was never present on those occasions.

Q. How did you learn Mr. Kyne received the money?

Mr. Gillen: Objected to as argumentative. This is his own witness on direct examination.

The Court: You may answer the question.

A. From conversation with Mr. Kyne.

Q. Do you know, of your own knowledge, what was done with the money after Mr. Kyne received it?

A. No, I do not, outside of the fact that sometimes he would bring it over and put it in the safe at 52 Mason Street.

Q. You would observe that from time to time?

A. Yes.

Q. And in what box in the safe would Mr. Kyne put the money?

A. Well, I didn't observe. It had several small boxes in the safe. [1252]

Q. You say you didn't observe what box he used?

(Testimony of Harold H. Maundrell.)

A. No, it was in the other office. I didn't go over there.

Q. Now during the year 1945, Mr. Maundrell, if you know, who were listed as partners in the Menlo Club?

Mr. Gillen: Just a moment. We have exhibits that were introduced by the prosecution as to partnership and I think they would be the best evidence.

The Court: He may answer the question if he knows.

A. Mr. Remmer, Kyne, Mr. Nelson, Mr. Ditto, Mr. Fricker, Mr. Turner and myself.

Q. And do you know the respective working percentages of each?

Mr. Gillen: Same objection, the records would be the best evidence, the exhibits that have been introduced.

The Court: I think that is true, Mr. Campbell.

Q. By reference to any of the records which you kept in the course of the business, Mr. Maundrell, would you be able to state the purported percentages of each of the parties to whom you have referred?

A. Yes, sir.

Q. And to what particular records?

A. I would have to refer to the ledger.

Q. I hand you plaintiff's Exhibit 126, Menlo Club for 1946, and ask you if that is the ledger to which you refer?

Mr. Gillen: Counsel asked—I don't know whether it is going to conflict with the information

(Testimony of Harold H. Maundrell.)

he is seeking—but counsel [1253] asked regarding partners during the year 1945. I think there were some changes, deaths, and various things.

The Court: Of course that book was suggested to counsel by the witness. Counsel inquired of the witness what record would show.

Mr. Gillen: It may not mean any confusion at all, but counsel's question is directed to 1945 and this is 1946.

The Court: We will find it out in a moment and see.

Q. There is also a ledger headed "Menlo Club 1947," plaintiff's 125, if that will be of any assistance to you. Well, Mr. Maundrell, let us pass that for the time being and you can look at this during the recess this morning. Now during the year 1946 will you state, if you recall, who the individuals were having a working interest in the Menlo Club?

Mr. Gillen: I lost what happened to the last question.

Mr. Campbell: I told him to look it up during the morning recess.

A. Mr. Remmer, Mr. Kyne, Mr. Nelson, Mr. Turner and myself.

Q. Now you have named the same individuals with the exception of Mr. Ditto and Mr. Fricker. Will you state whether or not they dropped out at the end of the year 1945?

A. Yes, sir, they were both ill.

Q. I was going to ask you that. I believe you stated Mr. Ditto was ill. Was Mr. Fricker also ill?

(Testimony of Harold H. Maundrell.)

A. Yes, sir. [1254]

Q. Incidentally, what is Mr. Fricker's first name? A. William.

Q. You are referring to——

A. Memorandum.

Q. That is a memorandum which you made yourself?

A. Yes, sir. He was known also as Mr. Fisher. I made that memorandum after looking through the books here the other day.

Mr. Avakian: May we also see the memorandum?

The Court: Yes.

Mr. Campbell: Yes, it may be marked for identification.

The Clerk: 138 for identification.

(Jury and alternate jurors admonished and recess taken at 11:00 o'clock.)

11:15 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, just before the recess I asked you as to the percentages as shown by the records

(Testimony of Harold H. Maundrell.)

as to each of the persons you described as having a working interest in the Menlo Club in 1945, and during the recess you examined certain records. Are you able to state at this time what the records disclose as to the percentages of each of the people whose names [1255] you gave.

A. I find that the capital accounts of the different partners in the Menlo Club was taken out of the Menlo Club ledger and put into this Menlo Club return. This was not made up by me at all. This was made up by some auditor or bookkeeper in 1948. However, there—

Q. (Interrupting): May I ask you this in connection—you say this was not made up by you and you have called attention to two small sheets which are contained in government's Exhibit 125, which is entitled "Menlo Club 1947," the first of which bears the heading, "Maundrell, Harold H." on the upper right-hand corner, and the second of which bears the heading, "Remmer, Elmer F." Are those the two sheets to which you refer?

A. Yes, sir, those were made up by me.

Q. These were made up by you?

A. Yes, sir.

Q. And at the time you left the business there, in what records were they contained?

A. They were contained in, I believe, 1946 Menlo account book they brought in here.

Q. The Menlo Bar account. Are you referring to the loose pages, which is government's exhibit?

A. The loose pages, I believe they are in here.

(Testimony of Harold H. Maundrell.)

Q. And you have referred to Exhibit 126?

A. Yes, sir. [1256]

Q. I think you will observe that the size of the pages in government's Exhibit 126 are the same size and type of accounting pages as the two pages to which you have made reference and which are now bound in plaintiff's Exhibit 125.

A. Yes, sir.

Q. You say, however, these pages were made up by you. I am referring to those in the bound ledger.

Mr. Gillen: Are those the same two pages, the Maundrell page and the Remmer page?

Mr. Campbell: Yes.

A. These were made up by me somewhere. They were taken out some time in 1948.

Q. After you left? A. Yes, sir.

Q. Now by referring to each of those pages, will you state what the percentages were of the various individuals in 1945, the working percentage?

A. Well, on the first was Harold Maundrell 10 per cent, Thomas Turner 5 per cent, I believe William Kyne had 15 per cent, Oscar Nelson 15 per cent.

Q. May I ask you first, what did you say your percentage was? A. Ten.

Q. And Mr. Turner?

A. Five. Now I am only calling this from memory because it is not noted here in [1257] the book.

(Testimony of Harold H. Maundrell.)

Q. Does this book refresh your recollection as to percentages?

A. No, it wouldn't unless we deciphered these figures down.

Q. What is your best recollection?

A. That is what I am trying to give you.

Q. All right, proceed. You have not yet referred to Mr. Remmer, Mr. Ditto and Mr. Fricker.

A. I think Mr. Fricker had 10 per cent.

Q. And Mr. Ditto?

A. I believe he had likewise.

Q. Ten per cent, and what did Mr. Remmer have?

A. Mr. Remmer, I believe, at that time had—I am not quite sure whether he had 50 or 55 per cent.

Q. Now from the figures which you have given, Mr. Maundrell, you have accounted for over 100 per cent. I am going to call your attention to the partnership return of income of 1945, government's Exhibit 89, and call your attention to certain percentages set forth thereon. Have you seen that return previous to this time? A. Yes, sir.

Q. And I call your attention to the percentages and ask you if that refreshes your recollection as to percentages? A. Yes, sir.

Q. What are those percentages?

A. Elmer Remmer 40 per cent, William Kyne 15 per cent, Masse Ditto 10 per cent, Oscar Nelson 10 per cent, Harold Maundrell 10 [1258] per cent, William E. Fricker 10 per cent, Thomas Turner 5 per cent.

(Testimony of Harold H. Maundrell.)

Q. Now, in 1946 what were the percentages as shown by your records?

A. 1946 William Kyne 15 per cent, Oscar F. Nelson 15 per cent, Thomas Turner 5 per cent, Harold Maundrell 10 per cent.

Q. And Mr. Remmer?

A. Mr. Remmer 55 per cent.

Mr. Avakian. May the record show from which exhibit the witness was giving these figures?

A. Menlo Club 1947, Exhibit 25.

Mr. Campbell: I am going to ask at this time that the two sheets concerning which the witness has testified be given numbers 125A and 125B, being the sheets respectively headed "Maundrell, Harold H." and "Remmer, Elmer F."

The Court: They are out of exhibit already admitted in evidence?

Mr. Campbell: Yes, your Honor, and I am giving sub-numbers to those particular portions so they may be identified, 125A and 125B respectively.

Mr. Gillen: They are sheets out of a ledger?

Mr. Campbell: Yes.

Q. Now, Mr. Maundrell, during the period of time that you worked there, what salary or wages did you receive?

A. The year 1945 I received \$2100. [1259]

Q. At what rate per month, do you recall?

A. I think it was \$300 a month.

Q. During 1946 what was your rate of compensation?

A. I received, I believe, either \$4500 or \$4600.

(Testimony of Harold H. Maundrell.)

Q. Was that by way of salary?

A. Yes, sir.

Q. During that time that you were there, particularly in 1945 and 1946, did you have any interest or working percentage arrangement as to any of the organizations other than the Menlo Club?

A. Yes, in 1946 Day-Night Cigar Store paid \$75 a month and the 110 Eddy paid \$75 a month.

Q. Was that by way of a percentage or by way of a salary?

A. No, it was charge for taking care of their books.

Q. A charge which you made against them?

A. Yes, sir.

Q. My question was—you have produced here an agreement whereby purportedly you had some working arrangement on percentage basis and ultimately you would become a full partner in the Menlo Club. Did you have any such arrangements as that as to any of the other concerns?

A. No, sir.

Mr. Gillen: I move the answer go out.

The Court: That may go out.

Mr. Gillen: I object to the form of the question and use [1260] of the word "purportedly."

Mr. Campbell: I will withdraw the question and reframe it.

Q. You have produced an agreement here between yourself and Mr. Remmer, with relation to the Menlo Club. Did you enter into any similar

(Testimony of Harold H. Maundrell.)

contracts with respect to any of the other businesses? A. No, sir.

Q. Either in writing or orally? A. No, sir.

Q. Now during the years 1945 and 1946 did you receive any percentage or was there paid to you any percentage of the income of the Menlo Club?

Mr. Avakian: Object to the question as complex. First he asked whether he received any percentage and then asked whether anything was paid to him. Those are two different words which may have the same ultimate meaning, but I think the question should be such as a clear answer should be given to it. I object to the form.

Mr. Campbell: I will reframe it.

Q. During the years 1945 and 1946 was there paid over to your interest any percentage or portion of the net profit of the Menlo Club?

A. Not in actual cash, but it was paid on my capital account on the books.

Q. There was set up, was there not, a capital account on the [1261] books to which certain of the profits were credited? A. Yes, sir.

Q. However, was any of that money actually paid over to you?

Mr. Avakian: Objected to as asked and answered.

The Court: Objection overruled.

Q. In the years 1945 and 1946?

A. I received no cash.

Q. Now at the time you ultimately left your association with Mr. Remmer and his various busi-

(Testimony of Harold H. Maundrell.)

nesses, which I believe you stated was in 1948, did you at that time receive some cash settlement?

A. Yes, I did.

Q. What was the amount of that?

A. Twelve thousand dollars.

Q. At the time you left in 1948 was the Menlo Club still in operation?

A. Yes, it was. I became sick thereafter.

Q. But at the time you left was it still in operation, the time you left the active employment?

A. I don't remember at the moment.

Q. Will you state whether or not the Menlo Club operated throughout 1947? A. Yes, sir.

Mr. Campbell: Now at this time I wish to have marked for identification this document headed "Sales Order," to be marked [1262] 139 for identification.

Q. Now referring to government's Exhibit 125, marked "Menlo Club 1947" and to the sheets herein which have been marked 125A and 125B, will you state whether or not, at the time that Mr. Masse Ditto and Mr. Fricker left at the end of 1945 if any settlement was made or any payments made to them with respect to the capital accounts shown under their names?

A. Not to my knowledge.

Q. And up until the time that you left there in 1948 had any settlement been made?

Mr. Avakian: If he knows.

Mr. Campbell: If he knows.

A. I don't know.

(Testimony of Harold H. Maundrell.)

Q. Do the records disclose any settlement made?

Mr. Avakian: The records speak for themselves, your Honor, they are in evidence.

Mr. Campbell: This is a negative fact.

The Court: He may answer the question.

A. They do not.

Q. Now I am going to show you plaintiff's Exhibit 139 for identification and ask you to examine it. Can you state whether or not that refers to the safe on the premises at 52 Mason Street?

Mr. Avakian: Objected to, no proper foundation laid as to the witness' knowledge of the transaction—long before [1263] he came there. If your Honor will examine the document, I think you will see my point. You will observe the date and recall this witness' testimony as to the date of his employment.

The Court: He may answer the question.

(Question read.)

A. It appears to be the same safe that we had there at that time.

Q. Do you recognize the description set forth thereon? A. Yes, sir.

Q. And that is the safe to which you referred as having the 12 boxes?

Mr. Gillen: I think this is pretty much calling for his opinion and conclusion. I mean, there is no harm in the matter one way or another, but it is asking him to speculate on something that was purchased a year before he went to work there.

(Testimony of Harold H. Maundrell.)

(Question read.)

He may answer the question.

A. Yes, sir.

Q. And do you recognize the signature hereon over the sub-heading "Purchaser"?

The Court: Answer that yes or no.

A. Yes, sir.

Q. And whose signature is that?

A. William Kyne.

Mr. Campbell: This will be offered in evidence, No. 139. [1264]

Mr. Avakian: Your Honor, we object to the introduction on the ground no proper foundation has been laid for the document. The witness simply states it seems to describe a safe similar to the one that they had when he later came there and the introduction of the document in this manner deprives us of the opportunity to cross-examine regarding it. Your Honor will recall Mr. Kyne, the witness for the prosecution, was on the stand for four days and if they had presented that when Mr. Kyne was here, we could have cross-examined Mr. Kyne at that time.

The Court: I think Mr. Kyne was excused subject to call.

Mr. Avakian: Yes, but if we had tried to cross-examine Mr. Kyne on this document, we would have been met with the objection it was not within the scope of his direct examination.

The Court: I will permit you to cross-examine him.

(Testimony of Harold H. Maundrell.)

Mr. Avakian: And you will also instruct that he is brought back at the prosecution's expense?

The Court: The objection is overruled. I will not make any commitments now on the expense.

Mr. Avakian: Then we would have to bring him back at our expense to cross-examine him?

The Court: Very well. Objection overruled. If you want to bring him back, you may.

Mr. Avakian: We request that he be brought back at government's expense.

The Court: These discussions should be had outside the [1265] presence of the jury. They have no place in the record at this trial of the case.

Mr. Avakian: We have to take them up as they come.

The Court: Just suggest it to the Court and we will take it up later. Objection overruled.

Q. Mr. Maundrell, was a change fund kept at the Menlo Bar in connection with the operation of that business? A. Yes, sir.

Q. Will you explain what a change fund is?

A. That was a fund that was used in the Bar to pay petty cash receipts and also for the money for the bartenders to make change in the cash registers.

Q. And will you examine your books and records and state the amount of the change fund of the Menlo Bar as of December 31, 1945, and December 31, 1946?

(Jury and alternate jurors admonished and noon recess taken at 11:45.)

December 21, 1951—2:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, during the period of your employment, will you enumerate the safes that were maintained in the various [1266] businesses and the locations of those safes?

A. Well, there was a safe at 52 Mason Street.

Q. That is the one to which you referred?

A. That is the one.

Q. Who had access to that safe?

A. Well, I had access, Mr. Kyne, Mr. Remmer, Mr. Pritchett, I think Mr. Nelson. That is all I can think of at the time.

Q. Now by access, did each of the individuals that you have enumerated have a combination to the safe?

A. No, sir.

Q. Who had the combination to the safe?

A. Only Mr. Remmer, Mr. Kyne and myself.

Q. Now as to the various boxes which were in that safe which you have described, you have described a large box with a combination on it, which Mr. Remmer used, is that correct?

A. And Mr. Kyne.

Q. Did Mr. Kyne also have access to that box?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. And is that before he left to go into the service or after he returned?

Mr. Gillen: Just a minute——

Q. Was that after his return from the service?

A. Well, as soon as he came back to the office.

Q. Now were the other boxes in the safe—incidentally, were they lock boxes? [1267]

A. Yes, sir.

Q. Did they have combinations or key to open them? A. Key.

Q. And who utilized those boxes?

A. Well, Mr. Remmer had one of them he kept papers in.

Q. One of the smaller boxes?

A. Yes, sir. Mr. Kyne had, I think two of them he kept most of his papers in, and Mr. Pritchett had one and Mr. Nelson had one and I had the keys to all the rest of them, but they were not used.

Q. But now as to the boxes which belonged to it, first the combination box, the large box, and then as to the boxes which you say the others used, did you have the keys to those and the combination to the combination box?

A. I didn't have any key to the combination box.

Q. As to the lock boxes though?

A. Oh, the keys were left right in the boxes. The person that had a box kept their own keys but the empty boxes the keys were left in the box.

Q. But the people who had a box, did you have a key to their boxes? A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. And as to the combination box, did you have the combination to that? A. No, sir. [1268]

Q. What other safes were maintained in connection with those businesses?

A. The safe maintained at Tiny's Waffle Shop, a small safe in the office of the Waffle Shop.

Q. Was that utilized for anything other than keeping receipts over night?

Mr. Gillen: Objected to as calling for opinion and conclusion, what was the safe used for.

A. That was a small safe and kept petty cash and change.

Q. In regard to petty cash, I asked you before the recess if you would ascertain the amount of petty cash kept on hand at Tiny's Waffle Shop. What was that? A. Why, I don't know.

Q. Do the books show?

A. No, sir; because I have the 1945 books.

Q. You examined the books which are here, did you not? A. 1946.

Q. Now as to 1946, what did they show as to the amount of petty cash at the beginning and end of the year? A. They don't show.

Q. What is your best recollection as to the amount of petty cash maintained?

Mr. Gillen: Objected to, he said he didn't know.

The Court: I think he said he didn't know.

Mr. Campbell: I am asking him for his best recollection. [1269]

The Court: You may answer the question. Do you have the question?

(Testimony of Harold H. Maundrell.)

A. Yes. We had, I believe, \$300 in the Menlo Bar.

Q. Was that cash fund kept constant at all times?

Mr. Gillen: Just a moment—he was asking a moment ago about Tiny's Waffle Shop and he answered he doesn't know what cash was in the fund at Tiny's and he jumped from that to the bar.

Mr. Campbell: I will come back to that.

Q. You refer to \$300 kept at the Menlo Bar, was that a constant fund? A. Yes, sir.

Q. It is, is it not, the general practice with a petty cash fund to renew it as bills are paid, isn't that correct? A. Yes, sir.

Q. Now with respect to the Waffle Shop, what is your recollection as to the cash fund there?

A. They had a \$500 cash fund.

Q. And was that maintained as a constant fund?

A. Yes, sir.

Q. Now at the time you gave an answer with respect to this cash fund, you were enumerating the safes and stated there was a safe at Tiny's Waffle Shop, in which you kept books and petty cash. What other safes were maintained in connection with those businesses? [1270]

Mr. Gillen: They are talking about two things, change fund and petty cash fund.

The Court: Let me get the question.

(Question read.)

Mr. Campbell: I will ask that question.

Q. Are petty cash and change fund one and the

(Testimony of Harold H. Maundrell.)

same thing or are they different funds?

A. They are one and the same thing.

Q. Now, will you enumerate other safes that were maintained in connection with the businesses, if you know?

A. There was a safe in the Menlo Club.

Q. How large a safe was that?

A. It was a small safe.

Q. Who had access to that safe?

Mr. Gillen: I am going to offer an objection, your Honor, that the answer is not clear—it is a small safe.

Q. Well, approximately how large a safe was it?

A. It might have been 30 inches wide and about 35 or 40 inches high.

Q. Are you referring to outside or inside dimensions?

A. Outside dimensions; and about maybe 24 or 30 inches deep.

Q. Did that safe contain any boxes?

A. That I don't know.

Q. Did you ever see the interior of that safe?

A. No, sir. [1271]

Q. Do you know who had access to that safe?

A. I think the only one that had the combination to that was Mr. Nelson.

Q. And prior to Mr. Nelson coming there, the manager?

A. I don't think it was used prior to Mr. Nelson's time.

Q. What other safe was maintained?

A. There was a safe at 110 Eddy Street.

(Testimony of Harold H. Maundrell.)

Q. That was a bar operation? A. Yes, sir.

Q. How large a safe was that?

A. About the same size I just described.

Q. And who, if you know, had access to that safe? A. Mr. Cavani.

Q. Did you have access to that safe?

A. No, sir.

Q. Did you ever see the interior of that safe?

A. No, sir.

Q. What other safes were maintained?

A. That is all I know.

Q. Do you know whether or not a safe was maintained at the 186 Club? A. No, I do not.

Q. Or the Day-Night Cigar Store?

A. No, sir.

Q. Or at the B & R Smoke Shoppe? [1272]

A. No, sir.

Q. Now, I don't recall whether I asked you this or not—did you have access to any safety deposit box in connection with the operation of these businesses? A. No, sir.

Q. Were any safety boxes, if you know, maintained in your name in respect to any of these businesses? A. No, sir.

Q. Were you at any time given any slips or other records with relation to money placed in safety deposit boxes? A. No, sir.

Q. By any one? A. No, sir.

Q. Were you at any time given any records as to money kept in the various safes which you have described? A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. I am going to call your attention to government's Exhibit 110, which is one of a series being a poker sheet of the 186 Club, and in the lower left-hand corner of each sheet appears the notation "Tax box \$700." Now, do you know what the tax box was with relation to the 186 Club? A. No, sir.

Q. Do you know if some box was kept which was known as tax box? A. No, sir.

Q. Do you know for what purpose money designated on these [1273] sheets as tax box was used?

A. No, sir.

Q. You stated, I believe, that after you commenced the keeping of records with relation to the 186 Club, poker sheets were delivered to you, is that a fact? A. Yes, sir.

Q. And do you recall observing that expression, "tax box" with a sum of money set forth on those sheets? A. No.

Mr. Avakian: Objected to, the records are the best evidence.

The Court: It is already answered.

Q. Do you know whether or not, in the conduct of these various businesses, if there was any method utilized of segregating the withholding taxes or social security taxes?

A. The 186 Club paid me their withholding and old age pension and social security direct.

Q. Now, as to the other businesses?

A. As to 110 Eddy, that was charged against the 110 Eddy bank account. As to the Tiny's Waffle Shop, Menlo Bar and Menlo Club, those funds to

(Testimony of Harold H. Maundrell.)

pay those taxes were given to me, during the time Mr. Kyne wasn't there, by one of the partners, occasionally by Mr. Remmer, or he would order them given to me. During the time Mr. Kyne was there, he gave them to me.

Q. Do you know whether or not that money was kept separately [1274] daily or weekly?

A. That I do not know.

Q. Now, referring again to the records of the Menlo Club, and particularly to plaintiff's Exhibit 126, the Menlo Club records for 1946, I believe you stated, did you not, that that was a record in which the entries were either made by you or under your direction, is that correct?

A. Yes, sir.

Q. Now, when were entries made therein with relation to the dates recited?

A. Well, some of these entries were made the day after or two days after, some of them were not made until the week after.

Q. And were some made later than that?

A. Some of these entries may have been made as late as two weeks perhaps.

Q. Now, you identified government's Exhibit 125, headed "Menlo Club 1947," what are now plaintiff's Exhibits 125A and 125B, which you stated were maintained by you as part of the record which is now marked 126, is that correct, referring to these two sheets marked 125A and 125B?

A. These sheets were out of the 1946 ledger.

Q. Which is 126, is that correct?

A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. Were those sheets made up by you?

A. These sheets were put in by my secretary, according to the [1275] writing.

Q. The entries thereon are hers?

A. Yes, sir.

Q. Now, referring to the further partners' account, as the succeeding three pages are labelled, which immediately followed 125A and 125B, were those sheets prepared by you? A. No, sir.

Q. Do you know by whom they were prepared?

A. These were put in by my secretary.

Q. And were they prepared during the time of your employment, do you know?

A. Not all of them.

Q. Up until what time?

A. Up until on or about May 1, 1948.

Q. And after that you had terminated your employment, is that correct? A. Yes, sir.

Q. Although the entries after that date, do you recognize the handwriting on those?

A. Same writing.

Q. What was your secretary's name?

A. Miss DeGregoria.

Q. Did she remain employed there after you terminated your connection?

A. Yes, sir. [1276]

Q. When you say your secretary, will you state by whom her wages were paid?

A. Her wages were paid by the Menlo Club, Tiny's Waffle Shop and the Menlo Bar.

Q. You say your secretary, did she perform sec-

(Testimony of Harold H. Maundrell.)

retarial duties as well as making entries in the books? A. Yes, sir.

Q. And who originally engaged her services?

A. I did.

Mr. Campbell: I am going to ask to have a photostat marked for identification as Exhibit 140 for identification.

Q. I am going to show you 140 for identification, which is a photostat, and ask you if you recognize the writing and entries thereon? A. Yes, I do.

Q. And whose writing is that? A. Mine.

Q. And were those entries made by you in the course of your employment? A. Yes, sir.

Q. And when were they made?

A. Well—

Q. (Interrupting): I will ask you this, were the entries made on or about the date which the entries bear? A. Yes, sir. [1277]

Q. And as a part of your business there?

A. Yes, sir.

Mr. Campbell: I offer this in evidence as plaintiff's Exhibit 140.

Mr. Avakian: Your Honor, may I preliminarily inquire whether that is simply a photostat of a record already in evidence?

Mr. Campbell: No, sir, it is not.

Mr. Avakian: May we then inquire this, your Honor, is that a photostat of some document produced by the prosecution from the records obtained originally from the Menlo Club? If so, we would

(Testimony of Harold H. Maundrell.)

want to make our usual objections to that category of records.

Mr. Campbell: I will state that that photostat was made from records which were in the government's possession, returned to Mr. Semenza, and subsequently record which was deposited in this court but that that particular sheet is not here in evidence.

Mr. Gillen: May we have a moment?

Mr. Avakian: Your Honor, we have no knowledge of any such record having been included in any of those we have returned. Perhaps this is a matter we ought to delve into further before your Honor rules on that.

The Court: That isn't a very good ground for objection.

Mr. Avakian: Well, your Honor, we do not want any impression [1278] left that we removed any document from any of these books and it is a matter that perhaps should be explored with counsel.

The Court: I do not understand that counsel—

Mr. Gillen (Interrupting): Mr. Campbell did say when it was returned to Mr. Semenza and it is not there now. Now, that statement has implications that might be unfavorable.

Mr. Campbell: I am simply offering this at this time for what it may be worth and I am going to follow it with questions of this witness.

Mr. Avakian: Well, your Honor, our point is simply this—the statement Mr. Campbell made carried certain implications which may have been in-

(Testimony of Harold H. Maundrell.)

advertent or may be just counsel's state of mind. Whatever it is, we want to clarify any such implications.

The Court: I think it is not at all unlikely that in such a mass of material a record could be lost. Anybody could have lost that.

Mr. Avakian: Yes, it could have been lost by the government before it was returned to Mr. Semenza.

The Court: It might be lost by somebody. I think that could be considered as probable.

Mr. Avakian: I think that could be clarified.

The Court: I don't see any implication there is any wrong doing. [1279]

Mr. Avakian: As long as that is understood.

The Court: It hasn't appeared yet.

Mr. Avakian: Fine. We just have our usual objection on that ground.

The Court: So it will be admitted in evidence, Exhibit 140.

Mr. Gillen: I wonder if we could have Mr. Campbell's statement read?

(Statement read.)

The Court: This photostat, the original is not already in evidence, that is what I understood him to mean.

Mr. Gillen: He didn't mean it wasn't found?

The Court: No, he meant to tell you it wasn't a duplication, isn't that it?

Mr. Campbell: That is correct.

Q. Now, I will ask you, Mr. Maundrell, if the original sheet, of which that purports to be a copy,

(Testimony of Harold H. Maundrell.)

whether or not it was maintained by you also as a portion of plaintiff's Exhibit 126, the 1946 records of the Menlo Club?

A. I won't say positively that it was in the Menlo Club, it may have been in the Tiny Waffle Shop record.

Q. I am going to show you those 1946 records of Tiny's Restaurant and Menlo Bar and you have before you the 1946 ledger of the Menlo Club, and ask if you will examine those and see if the original, of which that is a photostatic copy, was [1280] maintained there?

A. This would have been in the 1945 ledger. This was a copy of the 1945.

Q. The 1945 ledger which is not here present?

A. Yes, sir; that is, I haven't found it.

Q. I call your attention to the fact that certain 1946 entries are there on the last entry. Now, Mr. Maundrell, is the information as set forth thereon accurate information as entered by you from information then in your possession at the time of the entries?

A. Yes, sir.

Q. I am going to direct your attention to plaintiff's Exhibit 125, Menlo Club ledger, with the notation 1947, and under the heading "Assets," the second sheet thereof, which bears a typewritten notation, "Tiny's Restaurant, Menlo Bar, Menlo Club Furniture, Fixtures, Equipment and Lease" and ask you if that was a record kept by you?

A. Yes, sir.

Q. Is that your writing?

(Testimony of Harold H. Maundrell.)

A. No, my secretary's writing.

Q. When was that written?

A. That was written August 8, 1945, up to and including May 1, 1947.

Q. And when did you prepare that? When did you make each entry?

A. Those were made all about the time of the date. [1281]

Q. I call your attention to compare the two sheets and to observe that the entries are different on each of them.

Mr. Gillen: I move the question be stricken. I object to the form.

The Court: Objection sustained.

Mr. Gillen: May it be stricken?

The Court: Any answer to it will be stricken. The question will remain in the record but the objection will be sustained.

Q. Mr. Maundrell, I am going to direct your attention first to plaintiff's Exhibit 140, which you have identified as being made by you in the course of the business and that the entries are correct, and that first entry appearing thereon appears to be as of April 30, 1945. Now, referring to plaintiff's Exhibit 125, the ledger of the Menlo Club, to which your attention has been directed to the account of furniture, fixtures, equipment and lease, and ask if you find thereon any entry or entries under date of April 30, 1945?

A. No, the date is not there for that particular entry.

(Testimony of Harold H. Maundrell.)

Q. Do those two sheets, Mr. Maundrell—

Mr. Avakian (Interrupting): I thought the witness was continuing his answer.

The Court: Was your answer interrupted?

A. I think so.

(Question read.) [1282]

Mr. Campbell: If the Court please, that can be answered yes or no.

Mr. Avakian: Your Honor—

The Court: We are wasting so much time over things that do not amount to anything. I am going to have the question and answer read as so far given and let Mr. Maundrell add to it if he desires to. Read the question and answer as given and see if he wants to add anything to it.

(Question and answer read.)

The Court: You were about to finish.

A. There is quite a little explanation, Judge.

The Court: You can make it if you want to.

A. It seems at the time of purchase of the property—I wasn't there—but there was 25 thousand dollars, as I understand it, given in cash which was afterwards taken up and paid for by a check which was issued on August 8th to Mr. Schriber. In other words, it was just washing the original 25 thousand dollars, as I understand it, so when it was set up on the books it was set up that way. The original credit was in there for 25 thousand dollars, but that was drawn down and a check given for that 25 thousand.

(Testimony of Harold H. Maundrell.)

Q. Now, which of those two exhibits which you hold in your hand, Mr. Maundrell, represent your original entries with regard to those [1283] transactions? A. The photostatic copy.

Q. Now, to what general transaction do both of the ledger sheets relate?

A. They relate to the description of the property, the cost of the lease, cost of inventory, and the balance at that time of 175 thousand dollars.

Q. And with whom was the transaction had?

A. With Gene Schriber.

Q. Now, the photostat which you hold in your hand, as I understand your testimony, you first set up, is that correct? A. Yes, sir.

Q. And I notice the last entry is February 28, 1946? A. Yes, sir.

Q. So that was there any other record made up until the time of that last entry of February, 1946?

A. With reference to the purchase?

Q. In reference to the transaction with Gene Schriber, as described by this photostatic copy?

A. No, sir, that was up to that time, up to the last payment I made.

Q. Did you have any other ledger sheet up until February, 1946, of this last payment, relating to that transaction?

A. That was transferred then to this sheet here, when that payment was made.

Mr. Campbell: May I have the question read?

(Question read.) [1284]

A. I don't know at that time.

(Testimony of Harold H. Maundrell.)

Q. Can you state whether or not the page which is a part of 1947 Menlo records, Exhibit 125, was made up before or after February, of 1946?

A. No. I believe it is a copy of the record.

Q. Will you look at the two and see if the record, which is the account in the ledger, is a copy of the original record?

A. With the exception of that 25 thousand dollars dated April 30th, I wasn't there at the time that transaction took place.

Q. It is a fact, is it not, that on the ledger sheet before you there are no entries as of April 30, 1945, while on the photostatic copy there are two entries under date of April 30, 1945?

A. Well, the first entry is the description of the property, cost of the property, which is in here.

Q. The first entry by date on the ledger sheet is August 8, 1945, is it not? A. Yes, sir.

Q. And the first entry by date on the photostatic copy is April 30, 1945, is that correct?

A. Yes, sir.

Q. And the second entry on the photostatic copy is April 30, 1945, is that correct? A. Yes, sir.

Q. And there are no entries whatsoever as of April 30, 1945, on [1285] the ledger sheet which is part of plaintiff's Exhibit 125, is that correct?

Mr. Gillen: May it please the Court, I am going to offer an objection—I do not know just what counsel is doing, he is cross-examining his own witness, and your Honor will well recall that the prosecution introduced as their witness one Mr. Gene

(Testimony of Harold H. Maundrell.)

Schriber, who described this entire transaction in detail, the amount of money he received for the purchase of the Menlo Club and its fixtures and operation and the two adjoining businesses, restaurant and bar, and went into considerable detail. Frankly, your Honor, I am at a loss to follow counsel. I do not know whether he is trying to impeach a witness that he earlier in the trial introduced, who gave some explanation of how——

The Court (Interceding): Perhaps if he answers this question we will get on the right track and let us see what it is.

Mr. Gillen: I object to the form of examination as cross-examination of the witness.

The Court: Objection overruled. We will see what this question will bring forth.

(Question read.)

Mr. Gillen: I think I will offer the objection it has been asked and answered by what Mr. Maundrell described as a long explanation of the transaction. [1286]

The Court: You may answer the question. Objection overruled. A. No, there is not.

Q. Now, I wish to draw your attention to another matter. On plaintiff's Exhibit 140, the photostat, the cost of the lease is set up at 100 thousand dollars and the cost of equipment and inventory is set up at 75 thousand dollars, is that correct? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. I draw your attention to Exhibit 125, the ledger of the Menlo Club 1947 and will you state the figures shown as the cost of the lease on that account? A. \$143,801.50.

Q. And what is shown as cost of the equipment and inventory? A. \$31,895.50.

Mr. Gillen: What is the total shown?

A. 175 thousand.

Mr. Avakian: On both sheets counsel, same total on both?

Mr. Campbell: Yes.

Q. I call your attention to the fact that as of the end of the year 1945, on plaintiff's Exhibit 140, the balance due on that account is shown as 100 thousand dollars, is that correct?

A. No, it is not correct.

Q. What was the balance due according to plaintiff's Exhibit 140 at the end of 1945, according to Exhibit 140? [1287]

A. According to that exhibit it is 100 thousand dollars.

Q. Now, according to the ledger sheet, which is a part of plaintiff's Exhibit 125, what was the balance due at the end of 1945? A. 125 thousand.

Q. Now, I am going to show you plaintiff's 132A for identification, which consists of two checks, one dated June 11, 1945, No. 1033, in amount of four thousand dollars—

Mr. Gillen: Just a moment—we might as well have it in evidence as read it in.

Mr. Campbell: I beg your pardon.

(Testimony of Harold H. Maundrell.)

Q. I show you signatures on those checks, are these your signatures? A. Yes, sir.

Q. And were they issued by you in the course of your duties? A. Yes, sir.

Mr. Campbell: I am going to offer these checks in evidence as 132A.

Mr. Avakian: Same objection as to the 132 series.

The Court: Objection overruled and Exhibit 132 is admitted in evidence.

Mr. Campbell: As 133A for identification I am going to withdraw a pink slip and ask that that be given a number for identification in the 133 series, which would be 133P for identification. [1288]

Q. I now show you 133A for identification, consisting of three cancelled checks, and ask you if that is your signature on each of those checks?

A. Yes, sir.

Q. And were those checks drawn and signed by you in the course of your duties which you have described? A. Yes, sir.

Mr. Campbell: We will offer these three checks in evidence, No. 133A.

Mr. Avakian: Same objection as to all checks of the 133 lettered series.

The Court: Same ruling and the exhibit now offered is 133A admitted in evidence.

Q. Now, referring to government's Exhibit 132A, which consists of two checks, one dated June 11, 1945, payable to Gene Schriber, in amount of four thousand dollars, signed Harold Maundrell,

(Testimony of Harold H. Maundrell.)

being check 1033, the second check dated August 8, 1945, being check No. 1242, payable to Gene Schriber, in amount of 25 thousand dollars, I will ask you to state for what purpose those checks were drawn?

A. The first check for four thousand dollars, check No. 1033, was drawn for deposit on the lease with Mr. Schriber; check No. 1242 to Mr. Schriber, 25 thousand dollars, was the first payment on the purchase price of the property.

Q. I show you government's Exhibit 133A, consisting of three [1289] checks, each bearing date of September 8, 1945, each payable to Gene Schriber, and being numbered respectively 1334, 1335, and 1336, and being in the respective amounts of 15 thousand dollars, 8500 dollars and 1500 dollars, and ask you for what purpose those checks were drawn?

A. Check No. 1334 to Gene Schriber was payment of the purchase price of the property. Check 1135, September 8th, the same date as the previous check, made to Gene Schriber, for \$8500, was to apply to the purchase. Check No. 1336, same date, to Gene Schriber, was to be applied on purchase price, making total of 25 thousand dollars.

Q. Now, with reference to Exhibit 132A, four thousand dollars and 25 thousand dollar check, and 133A, three checks totalling 25 thousand dollars, what was the source of the funds against which you drew those checks?

A. These funds were given to me by either the manager or Mr. Remmer, of the Menlo Club.

Q. What is your recollection?

(Testimony of Harold H. Maundrell.)

A. Well, I don't know offhand. It was either one of the two that gave it to me.

Q. In what form did you receive it?

A. Cash.

Q. Which you subsequently deposited in the Crocker National Bank? A. Yes, sir. [1290]

Q. Now, at the time of the first entry on plaintiff's Exhibit 140, April 30, 1945, had you then entered your employment with reference to the Menlo Club? A. No, sir.

Q. Now, I call your attention on government's Exhibit 140 to an entry under date of February 28, 1946, in amount of 25 thousand dollars to Gene Schriber, and ask you in what manner that was paid?

A. All the payments that I made to Gene Schriber were checks.

Q. Well, did you issue a check for that payment?

A. May I see the check book.

Q. Yes indeed. I am handing you government's Exhibits 134, 135 and 136.

The Court: Perhaps we had better take our recess. We will recess now in this case until Thursday, December 27th, at 10:00 o'clock, and the members of the jury and alternate jurors please bear in mind this admonition you have heard so many times. You are admonished do not discuss among yourselves or with any one else any matters connected with the trial of the case or form or express any opinion of the case until the case is finally submitted to you. When I admonish you to report

any one to the Court who might talk to you, after being informed that you are a member of the jury or alternate juror, I do not want you to have the idea that I am inferring [1291] that any one connected with this case would do anything of that kind or have anything to do with it, but some person might busy themselves in other people's business and try to talk to you. If any person talks to you or persists in talking to you, any one connected with this case or not connected with this case, it is your duty to inform that individual you are a member of the jury or alternate juror and if that individual then persists in talking, you should report him or her to the Court.

All witnesses under subpoena and present here will be instructed to appear at that time, December 27, 1951, at 10:00 o'clock.

(Recess taken at 3:00 p.m.) [1292]

State of Nevada,
County of Ormsby—ss.

I, Marie D. McIntyre, the duly appointed official court reporter in the United States District Court for the District of Nevada, do hereby certify: That I was present and took verbatim shorthand notes of the proceedings had and the testimony adduced at the trial of the case entitled, United States of America, Plaintiff, vs. Elmer F. Remmer, Defendant, No. 12,177, at Carson City, Nevada, commencing November 28, 1951, and concluding February 21, 1952, and that the foregoing pages, numbered 517 to 1292

inclusive, dated Dec. 10, 1951, to Dec. 21, 1951, inclusive, being Vol. II of four volumes, constitutes a true and correct transcript of my said shorthand notes, not including arguments in the absence of the jury, to the best of my knowledge and ability.

Dated at Carson City, Nevada, February 22, 1952.

/s/ MARIE D. McINTYRE,
Official Reporter. [1292A]

December 27, 1951, 10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, I am going to direct your attention to check stubs of the Crocker First National Bank for the period June 4, 1945, to September, 1945. I direct your attention to check stub No. 1240, in amount of 50 thousand dollars, date August 8, 1945, payee Gene Schriber, across which is written the pen notation "cancelled," and appended to it is the upper portion of a check bearing the same number and date, with the lower portion torn off, so the only writing appearing there is "Gen" and ask you for what purpose that check was drawn?

A. As I understand it, at that Mr. Remmer was

(Testimony of Harold H. Maundrell.)

to have paid 75 thousand dollars for the Menlo Club and the Menlo Bar and Tiny's Waffle Shop.

Q. Did you draw that check? A. Yes, sir.

Q. And did you thereafter cancel it?

A. Then afterwards I cancelled the check.

Q. Do you know, of your own knowledge, whether or not the sum of 25 thousand dollars was paid in cash at that time?

A. I was not there when that transaction took place. [1293]

Q. Then did you know whether or not 25 thousand dollars in cash was paid?

A. I was told it had been paid, yes, sir.

Q. In cash? A. Yes, sir.

Q. I call your attention to the next check stub, No. 1241, in amount of 25 thousand dollars, dated 8-8-45, Gene Schriber, across which is written the word "Cancelled" and attached to it is a portion of check of the same number, 1241, pay to the order of Gene Schriber, 25 thousand dollars, with the printed portion signature Harold H. Maundrell, but the written signature torn off. Now, was that a check which was drawn by you? A. Yes, sir.

Q. And was that cancelled under similar circumstances? A. Yes, sir.

Q. And were you present at that time?

A. At the time it was cancelled?

Q. At the time it was drawn?

A. Yes sir, I drew the check.

Q. Do you know whether or not cash in that amount was paid to Mr. Schriber in lieu of that check? A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. I draw your attention to stub No. 1242, in amount of 25 thousand dollars, also dated August 8, 1945, pay to Gene Schriber, now was that a check also issued by you? [1294] A. Yes, sir.

Q. Is that the check to which you refer where the check was cashed and the cash turned over to Mr. Schriber?

Mr. Gillen: Just a moment—the check was cashed and turned over to Mr. Schriber?

Mr. Campbell: The proceeds.

Mr. Gillen: I am going to object as assuming something not in evidence.

Mr. Campbell: I will withdraw the question.

Q. What was done with that check?

A. That check was given to Mr. Schriber.

Q. And withdrawn? A. Yes, sir.

Q. Now, Mr. Maundrell, directing your attention again to plaintiff's Exhibit 140, which is a photo-static copy of a ledger sheet entitled "Furniture, Fixture, Equipment and Buildings," referring to certain payments made to one Gene Schriber and which you testified, I believe, was in your writing, is that correct? A. Yes, sir.

Q. All of that is in your writing?

A. Yes, sir.

Q. And were the entries that appear thereon made by you on the dates which are set forth thereon? A. No, sir. [1295]

Q. When were they made?

A. That I don't remember.

Q. What is your best recollection?

(Testimony of Harold H. Maundrell.)

A. As to the date of April 30th, I wasn't there at that time. That was made some time in the month of May, I would say.

Q. Of 1945? A. Yes, sir.

Q. Now, as to the subsequent entries, subsequent filing entries?

A. I wouldn't say it was made the same day.

Q. Well, were they made on or about the same day, that is, within a day or two?

A. The entries may have been put in the book maybe after a week or two weeks. At that time I was spending more of my time at Cal-Neva Lodge.

Q. Did any longer period of time elapse between the transaction you have set forth there and your entry on the records of that transaction, longer than two weeks' time?

A. Well, it may have been a month. I don't know. I don't remember at this time.

Q. What is your best recollection as to how soon the entries were made there with relation to dates thereon?

Mr. Gillen: I think this whole subject was explored last week, may it please the Court, and I offer the objection it has been asked and answered.

Mr. Campbell: No, your Honor. [1296]

The Court: Objection will be overruled.

A. I don't remember.

Q. I am going to show you ledger, plaintiff's Exhibit 125, which is headed "Menlo Club 1947" and call your attention to a sheet upon which is typewritten, "Furniture, Fixtures, Equipment and

(Testimony of Harold H. Maundrell.)

Lease," and for the purpose of this examination I will ask to have this marked 125C in evidence.

Mr. Avakian: That is the second sheet?

Mr. Campbell: It is the second sheet under the heading "Assets." I ask to have this given a number, 125C. Now, I direct your attention to this page marked 125C—I may have asked you this Friday but if so I will ask you again—is the pen and ink writing thereon your writing? A. No, sir.

Q. Whose writing is it?

A. I believe that is my secretary's.

Q. To whom do you refer?

A. Mrs. DeGoria.

Q. As I understood you Friday, she remained in the employ of the organization after you left, is that correct? A. Yes, sir.

Q. Were you present when those entries were made?

A. Well, when the actual entries were made, I wouldn't say I was present.

Q. That is what I am referring to, when the figures were put [1297] down here in pen and ink, were you there?

A. I had charge of the office at the time but I wouldn't say I was there when the actual typing was put on it. I wouldn't know.

Q. Can you state, Mr. Maundrell, whether or not that sheet was made up during the time you were still employed there? A. Yes, sir, it was.

Q. When did you first see that sheet?

(Testimony of Harold H. Maundrell.)

A. I don't remember that.

Q. I observe that the last entry thereon purports to be as of May 1, 1947. Can you state when you saw it with reference to that date?

A. No, I don't remember.

Q. Can you state whether or not that sheet was actually made up at that time?

Mr. Gillen: Of course, I think that would be calling for his opinion and conclusion.

Mr. Campbell: Yes, that may be stricken.

Q. At the time you first saw that sheet, Mr. Maundrell, will you state whether or not all the entries that appear there now were on that sheet?

A. That I don't remember.

Q. Do you have a recollection of ever having seen the sheet?

A. As a matter of fact, I don't know whether I ever saw that sheet or not. [1298]

Q. You don't know whether you ever saw it?

A. No, I don't.

Q. But as to government's Exhibit 140, which purports to relate to the same general transaction, does it not?

A. Yes, sir.

Q. That is in your handwriting?

A. Yes, sir.

Q. And was made up by you?

A. Yes, sir.

Q. In connection with your employment?

A. Yes, sir.

Q. Now, with regard to the books and records which you maintained for the Menlo Club, will you

(Testimony of Harold H. Maundrell.)

state, Mr. Maundrell, whether they were a double or single entry system?

A. They were simplified double entry system.

Q. Will you state what you mean by that?

A. Well, I mean by that it showed the receipts and it also showed the disbursements.

Q. Did the record which you kept show inventories for 1944, 1945 and 1946 for the Menlo?

A. There was inventory made for the Menlo bar and also for Tiny's Waffle Shop.

Q. So far as the Menlo Club was concerned?

A. There was one entry made of the furniture and fixtures and also the inventory of the bar supplies and the Tiny's [1299] Waffle Shop grocery supplies.

Q. So far as the Menlo Club was concerned, do you have any record of cash on hand?

A. The Menlo Club, as I understand, started out with a bank roll.

Q. My question was, did you maintain any record of cash on hand for the Menlo Club?

A. No, sir.

Q. That was not reflected in the records which you kept? A. No, sir.

Q. Did you have access to the cash on hand?

A. No, sir.

Q. Was that reported to you from time to time by any one?

A. It was only reflected in the daily sheets, daily poker sheets.

Q. Did you ever at any time check the daily poker sheets against the cash? A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. So that I take it, in making such entries as you made, you relied upon the accuracy of the poker sheets which were handed to you, is that correct? A. Yes, sir.

Q. Now, is that also true of the other businesses for which you kept books, so far as the cash on hand is concerned?

A. Well, Tiny's Waffle Shop and the Menlo Bar a complete record [1300] was kept.

Q. By you? A. Yes, sir.

Q. But now as to the Day-Night Cigar Store?

A. A complete record was kept.

Q. Did you receive the cash from the Day-Night Cigar Stand or count it?

A. No, sir, I did not.

Q. What was the source of your information as to the daily receipts and cash on hand?

A. The Day-Night Cigar Stand had a manager.

Q. Who was that? A. Mr. Taylor.

Q. What years was he there?

A. He was there during the period of time that I was there, 1945-'46.

Q. How often did he report those matters to you? A. Every day.

Q. Now, did you count and check the cash as against the figures given you?

A. I didn't count the cash personally because he banked his own money every day, but he brought into my office the take of the cash register, the

(Testimony of Harold H. Maundrell.)

total receipts of the day and plus any petit cash items he had to pay out.

Q. Now, as to 110 Eddy Street, what information did you receive [1301] as to receipts and cash on hand?

A. The same condition existed there. Every day I would receive from Mr. Carvani, the manager, the takes of the cash registers, or I would say cash register, and also any petit cash that he had paid out during the day, that is, receipts for petit cash, and he banked his own money. I didn't count the money, and a report was made each day on a slip of paper.

Q. And you accepted that, I take it, for your purposes? A. Yes, sir.

Q. Now, you testified Friday that from time to time sums of money would be handed to you either by Mr. Remmer or from some one at the Menlo Club and you would be requested to draw checks for various purposes, do you recall that testimony?

A. Yes, sir.

Q. What entries would you make and in what books regarding such transactions?

Mr. Gillen: May it please the Court, I think it is a repetition of what was carefully gone into on Friday with Mr. Maundrell. He was shown a whole series of checks, he was asked where he got the money to cover those checks, and they were checked against his books as to the ledger on his check book and the checks themselves. I think this is repetition of something we have probed thoroughly.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: I do not believe so, no, sir. He checked as to what checks were issued for. I am asking him now how [1302] those were charged on the various books.

The Court: Objection overruled. Answer the question.

A. May I have the question, please?

(Question read.)

A. The bank account that I had was at the Crocker Bank and all the checks were put in the ledger of the Tiny's Waffle Shop.

Q. Yes; now that money you say was advanced from other sources, were they shown as liability for funds advanced or funds loaned to Tiny's Waffle Shop?

Mr. Gillen: May I offer the objection that it is not the best evidence. The books would be the best evidence.

Mr. Campbell: I am asking a general question first. I have the books with me if you desire to see them.

The Court: Objection overruled.

A. As I stated, from time to time the amount of money that I would receive to deposit for the benefit of the Tiny's Waffle Shop and the Menlo Bar was not enough to take care of the bills that were presented to me from time to time and as I needed that money I would present the bills and tell them the amount I needed and they would give me that amount and I would deposit that to the Tiny's Waffle Shop account in the Crocker Bank.

(Testimony of Harold H. Maundrell.)

Q. And would you set up any liability for funds for Tiny's Waffle Shop for the money advanced for that operation?

A. No, only the checks themselves would show in the ledger as to what the checks were for and for what account they were [1303] for.

Q. Was there set up any loans payable or similar account in the records? A. No, sir, no.

Q. Now, with relation to the type of expenditure which you testified which had no relation to Tiny's Waffle Shop and the money which passed through that account where you issued the check, how would those be handled on the books of Tiny's Waffle Shop?

A. As I stated before, each check was entered on the books and for what purpose the check was issued. There was an explanation for every check that was issued.

Q. Well, was any liability account set up?

A. No, sir.

Q. Or were any entries made on the books of any of the businesses from which you received that money?

Mr. Avakian: We object to that as assuming facts not in evidence because the evidence shows that these three types of businesses, the Menlo Club, bar and Tiny's Waffle Shop, were only one partnership, in one business, they were one business entity and Mr. Campbell's question assumes they were different and that is contrary to the evidence.

(Testimony of Harold H. Maundrell.)

The Court: Let us have the question.

(Question read.)

The Court: Objection overruled. You may answer the question. [1304]

A. Tiny's Waffle Shop, the Menlo Bar and Menlo Club were all one business, all doing business under the name of William Remmer, doing business as—

Q. Each of the three? A. Yes, sir.

Q. And where were they shown in that record?

A. Well, the tax return and the license was taken out in the name of William Remmer.

Q. And who was William Remmer?

A. William Remmer was a nephew of Mr. Elmer Remmer.

Q. Did he, to your knowledge, have anything to do with the business other than the use of his name?

A. No, sir. It was Mr. Remmer's intention—

Mr. Campbell: Just a minute, you can't state—

Mr. Gillen: I ask that the witness be permitted to explain his answer.

The Court: That objection is sustained, to this last statement—

Q. Now, let us take an example—

Mr. Gillen: May it please the Court—

The Court: Let us have the last question read.

(Record read.)

The Court: There is nothing before the Court.

Testimony of Harold H. Maundrell.)

Mr. Gillen: Your Honor, I direct the witness to explain his answer. [1305]

The Court: I have already ruled, that that statement he was about to make will not be allowed. There is nothing before the Court.

Mr. Gillen: Mr. Campbell shut him off and I ask that he be permitted to explain.

The Court: Yes, and the Court feels the matter should not be given in the record.

Q. For example, Mr. Maundrell, let us refer to two of these checks, being 136E and 136F, dated September 6 and 12, 1946, respectively, both payable to B. & H. Refrigeration Service Company, in amounts of 276 some odd cents and 322 and some odd cents. I believe you testified that those were used for the purchase of refrigeration equipment for the bar, is that correct? A. Yes, sir.

Q. And I believe you also testified that the money to pay that was given to you either by Mr. Kemmer or the manager of the Menlo Club, is that correct? A. Yes, sir.

Q. Now, it is a fact, is it not, that so far as these three businesses were concerned, Tiny's Waffle Shop and the Menlo Bar and Menlo Club, separate sets of books were kept for each of those businesses?

Mr. Gillen: Objected to as leading and suggestive. The exhibits are the best evidence. [1306]

The Court: That may be——

Mr. Campbell: It is a preliminary question.

The Court: Yes, I do not believe it is going to be injurious, as far as the leading matter is concerned.

(Testimony of Harold H. Maundrell.)

So you may proceed. Objection will be overruled.

A. Yes, sir.

Q. Now, I am going to hand you records which have heretofore been introduced in evidence. I am going to show you plaintiff's Exhibits 125, Menlo Club 1947, and 126, Menlo Club 1946, together with plaintiff's Exhibit 127, Tiny's Restaurant for 1946, Exhibit 128 Tiny's Restaurant and Menlo Bar 1945, and Exhibit 129 Menlo Bar for 1946, and I will ask you to refer to the expenditure as set forth on the two checks which I have handed you, payable to the Refrigeration Company, and ask you to point out what entries were made in the records with respect to that payment apparently made on or about September 12, 1946?

Mr. Gillen: May I inquire 128A, which is not in evidence, I do not know whether that was handed to the witness, marked for identification—was that handed to the witness?

The Clerk: No, I have it.

Mr. Campbell: Counsel has referred to 128 for identification. I believe you stated, did you not, that you did not know whose handwriting that was in?

Mr. Golden: I just got mixed up in the numbers.

Mr. Campbell: As I recall his testimony, he didn't [1307] identify it.

Mr. Golden: That's right.

A. Check dates September 12, 1946—

Q. You are referring to plaintiff's Exhibit 136F?

A. May I refer first to check No. 2465, dated September 12th?

(Testimony of Harold H. Maundrell.)

Q. I thought that was the one you were referring to, plaintiff's Exhibit 136F.

A. That was a check issued for the account of bar, which appears in Tiny's Waffle Shop ledger.

Q. How does it show on Tiny's Waffle Shop ledger?

A. It shows that it was issued for account of bar. It is "paid to" and it is a bar check. In other words, the check number is entered in the book as of the same date check No. 2465, it is marked "bar," referring to the bar, the account that was set for the bar.

Q. Now, the first book to which you refer is the Waffle Shop, exhibit 127. You are now referring to Exhibit 129, books of the Menlo Bar?

A. And referring to the Menlo Bar it shows check No. 2465 paid to the B. & H. Refrigeration Service for \$322.27, and charged against repairs and replacements.

Q. Now, was any asset account set up on the books of the Waffle Shop reflecting an indebtedness from the Menlo Bar to the Waffle Shop?

A. No, sir. [1308]

Q. Now, with respect to that refrigeration equipment which was purchased, was any capital account set up in the books of the bar to reflect that purchase?

A. No, sir, because this was put in for repairs and replacements, was put in as direct charge.

Q. As I understand your testimony, that was for the purchase of new equipment?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. Now, is your testimony the same as to the second check to which I referred?

A. Yes, sir.

Q. Handled in the same manner?

A. Yes, sir.

Q. Now, so far as the three businesses were concerned, that is, the Waffle Shop, the Bar and the Menlo Club card room, I believe you have previously identified, have you not, returns which were filed for each of those enterprises?

Mr. Avakian: No, your Honor, that is assuming facts contrary to the evidence. The partnership returns which Mr. Campbell had introduced show return in the name of the Menlo Club only, the return covers all three businesses combined and it is in Mr. Campbell's exhibit; Menlo Club returns, both 1945 and 1946.

Mr. Campbell: Mr. Avakian may be right. Yes, I will withdraw that question. I think that is correct. I withdraw [1309] it.

Q. Now, Mr. Maundrell, referring again to plaintiff's Exhibits 114 and 114A and 114B, I believe you identified as the poker sheets of the Menlo Club for the dates shown thereon and from which I believe you testified you obtained the information which was entered by you in the Menlo Club books, is that correct?

Mr. Avakian: Objected to again assuming facts not in evidence because Mr. Maundrell's testimony was not that he identified these sheets, but simply

(Testimony of Harold H. Maundrell.)

that these were similar to sheets which he had seen.

The Court: Objection overruled.

(Question read.)

A. Partially so. My testimony, as I remember it, is the fact that these were similar sheets and that a great many entries on these I did testify to——

Q. Were the same entries as you made in your books, is that correct? A. Yes, sir.

Q. Now, I direct your attention to the fact that in the lower right-hand corner of each of these sheets appear certain names with amounts set opposite them. What do they represent?

Q. Well, they represent IOUs, or markers as we call it in the business.

Q. Were they IOUs which were owing to the Menlo Club on the dates which they were entered on the sheets? [1310]

A. Yes, I would say they were owing at that time.

Q. Now, other than the poker sheets themselves, did you set up any records of the amounts owing to the Menlo Club by way of IOUs or markers?

A. No, sir.

Q. Is it correct then that the only record in that regard would be that set forth on the poker sheets?

A. Yes, sir.

Q. Mr. Maundrell, in your testimony Friday you identified a number of checks which are parts of Exhibits 132, with its various subdivisions, 133,

(Testimony of Harold H. Maundrell.)

134 and 135, as being checks drawn to pay for constructing an office on the premises at 50 or 52 Mason Street, do you recall that? A. Yes, sir.

Q. Now, I believe you testified that money for that purpose against which to draw those checks, was given to you by either Mr. Remmer or the manager of the Menlo Club, as you required the funds, is that correct? A. Yes, sir.

Q. Will you state whether or not entries were made in the Menlo Club books reflecting those advances for that purpose?

Mr. Gillen: Objected to, the books are the best evidence.

The Court: Objection overruled.

A. The entries for it were in Tiny's Waffle Shop books. The reason for that was that the Crocker bank account was all [1311] handled through the Tiny's Waffle Shop accounts.

Q. I am going to hand you the records which refer to Tiny's Waffle Shop, being government's Exhibit 127, Tiny's Restaurant for 1946 and 128, Tiny's Restaurant and Menlo Bar for 1945, and ask you the nature of the entries made with respect to such expenditures for setting up of the office at 50 and 52 Mason Street.

A. The entries were put in the books because—I am referring to **Exhibit 128—for instance, Fred Shell**, contractor, \$2,500, he was given a check for \$2,500.

Q. How was that recorded on the books of the Waffle Shop?

(Testimony of Harold H. Maundrell.)

A. Well, it was on the right-hand side of the page under "Payments," that was account of Mr. Remmer, \$2,500. He had given me the \$2,500 to pay for this carpenter work.

Q. Do you know the source of that money?

A. Well, I presume that came out of the receipts of the Menlo Club.

Q. You say you presume that. Did you make any such entry in the Menlo Club books?

A. No, sir.

Q. Did you set up any capital account with respect to improvements in the records?

A. No, sir.

Q. Did you set up any liability account or any asset account in any books and records in regard to that expenditure? [1312]

A. No, sir.

Q. The entry to which you refer simply reflects the expenditure of that \$2,500 through the bank account which you maintained, does it not?

A. Yes, sir.

Q. Now, were the other expenditures to which you refer carried in a similar fashion?

A. Yes, sir.

(Jury and alternate jurors admonished and 10 minute recess taken at 10:50.)

11:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumed the witness stand on further

Direct Examination

By Mr. Campbell:

Q. Mr. Maundrell, I will ask you whether or not in the course of your employment by Mr. Remmer, you prepared any personal income tax returns for him or for his wife, Helen Remmer?

A. No, sir.

Q. And did you, at any of the years of your employment, supply figures to any one for the purpose of preparing the returns?

Mr. Gillen: Objected to as asked and answered on Friday. He said he gave the information to Mr. Mooney.

The Court: He may answer the question. Objection overruled. [1313]

A. I did. I talked to Mr. Mooney on two or three occasions.

Q. And do you recall now in respect to returns for what years?

A. I believe that the '45 returns I assisted him, and also the '46 returns. I know I supplied him some information for both of those years because we had several conversations about it.

(Testimony of Harold H. Maundrell.)

Q. I am going to show you plaintiff's Exhibit No. 3, the individual income tax return for the year 1945 of Elmer F. Remmer and ask if you will point out what figures that are set forth on that return that you supplied to Mr. Mooney?

A. I believe I supplied him with the Menlo Club, the 110 Eddy and Day-Night Cigar Store.

Q. I direct your attention to this language with respect to the San Diego Social Club and 21 Club; "Deduct 10% commission to the following: re J. Billington, doing business as San Diego Social Club; deduct 10% Anthony Riggardo, 110 Eddy, \$1,982; Andy Desmoni, 110 Eddy, \$1,982.97; Dave Billington, 110 Eddy, \$198.97," did you supply him with those figures? A. No, sir.

Q. Do you know any of those individuals?

A. I know who they are. I met some of them.

Q. Who is Anthony Riggardo?

A. Well, he went to Cal-Neva one season when I was there.

Q. You knew him there?

A. Yes, sir. [1314]

Q. That is when you were employed, I believe, by Mr. Remmer? A. Yes, sir.

Q. Who is Andy Desmoni?

A. He was one of the managers of the game room. As a matter of fact, he is the man I didn't remember his name the other day.

Q. Who is Dave Billington? A. Dave?

Q. Yes, Dave Billington, 110 Eddy. J. Billington is referred to right immediately above there, the

(Testimony of Harold H. Maundrell.)

person in whose name was conducted. This is Dave Billington set forth 10 per cent income from the San Diego Club?

A. Dave Billington I don't know.

Q. I call your attention that all three of those names listed as receiving 10 per cent were of the San Diego Social and 21 Club and addresses were listed as 110 Eddy Street, and I believe you testified that you kept the records with respect to 110 Eddy Street. Do you know whether or not any of those individuals were employed by or had any connection with the business of 110 Eddy Street?

A. No, sir, they did not.

Q. Have you ever heard of a Dave Billington in connection with your employment?

A. The only Billington I know is a man named as Frankie Denny. I didn't know of Dave.

Q. Frankie Denny, you saw him in the courtroom? [1315]

A. Yes, sir.

Q. And he identified himself as Joseph Billington?

A. Yes, sir.

Mr. Gillen: May I ask counsel through your Honor, his mention of J. Billington, is that just the initial or Joseph Billington?

Mr. Campbell: Initial J period Billington, doing business as.

Mr. Gillen: It is obvious you could say Dave for J.

Mr. Campbell: I object to argument.

The Court: It will be stricken from the record.

(Testimony of Harold H. Maundrell.)

The remarks will be stricken from the record. There is nothing before the Court.

Q. I am going to call your attention to plaintiff's Exhibit 5, 1946, individual income tax return of Elmer F. Remmer, Cal-Neva Lodge, Lake Tahoe, Nevada, and ask you what figures, if any, you supplied in connection with the preparation of that return?

A. I supplied the Menlo Club return, 110 Eddy Street, Transit Smoke Shop and Day-Night Cigar Store.

Q. Now, what was the source of the figures which you supplied Mr. Mooney, both with respect to the 1946 return and to the 1945 return?

A. Statement that was made up by Mr. Ayton and the partnership returns that were filed.

Q. Now, which was it that you utilized giving Mr. Mooney the [1316] information, that is to say, the figures given you by Mr. Ayton or the figures taken from the partnership returns, or both?

A. Both figures for the Menlo Club were made up by Mr. Ayton.

Q. Do you know the source from which he made up those figures? A. The books.

Q. The books which you kept?

A. Yes, sir.

Q. And those are the books which you identified here? A. Yes, sir.

Q. And is that also true with respect to figures

(Testimony of Harold H. Maundrell.)
of the other enterprises, those were made up from the books?

A. 110 Eddy, Day-Night Cigar Store and Transit Smoke Shop, yes, sir.

Q. I call your attention to figure on income return, "Net gambling gains \$5,000," did you supply that figure? A. No, sir.

Q. Did you maintain any records regarding such matters? A. No, sir.

Q. With regard to the Day-Night Cigar Store and the 110 Eddy Street, did you maintain books and records for the calendar year 1946 with respect to the assets and liabilities of those two businesses?

A. The only records I kept were reflected in the books of both institutions.

Q. Let us take the 110 Eddy Street, and I call your attention [1317] to government's Exhibit 112 and 112A and ask you to examine them and state whether or not records of assets and liabilities were kept for the calendar year 1946?

A. Exhibit 112 is kept by Mr. Slater.

Q. Well, did you keep records for 1946 of the assets and liabilities?

A. The only records I kept were the income and the expenses.

Q. And you kept no asset and liability accounts for 1946 for that enterprise?

A. Only as to the partnership.

Q. I am asking you as to the year 1946, did you make any entries in regard to the capital accounts in 1946?

(Testimony of Harold H. Maundrell.)

A. Well, they would be reflected in the books of 1947.

Q. Well, did you make any entries in 1946?

A. Yes, sir.

Q. Other than January 1st entry?

A. No, sir. As to Kyne, as to Turner and Cavanani, I did.

Q. Did you keep any other asset or liability accounts? A. No, sir.

Q. Did you maintain any, for example, inventory account for the year 1946 at 110 Eddy Street?

A. Yes, there was monthly account that was kept.

Q. Is that reflected in the books?

A. It was reflected in the work sheets that went with the books. [1318]

Q. Do you know where those work sheets are?

A. No, sir.

Q. I am going to hand you records of the Day-Night Cigar Store, Exhibits Nos. 117 and 117B.

A. 117 was kept by Mr. Slater. That is the 1945.

Q. I am referring to 1946?

A. Yes, I kept it in 1946.

Q. Did you keep records of the assets and liabilities in 1946?

A. Yes, there is an explanation—

Q. Other than what purport to be the capital accounts of the partners?

A. That's all, just the capital accounts were taken off.

Q. Were any other assets or liabilities reflected in those records? A. No, sir.

(Testimony of Harold H. Maundrell.)

Q. I am going to show you government's Exhibit 118 for identification and ask you if you recognize the documents that are there? Do you recognize those?

A. Yes, I recognize some of them. Some of them I made at the time before I was employed.

Q. Now, as to those which you do recognize, Mr. Maundrell, what is the general nature of the documents?

Mr. Gillen: May it please the Court, the exhibit is only in for identification so we may not go into the contents.

Mr. Campbell: I am not going into the [1319] contents.

Q. —of the various businesses by which you were employed? A. Yes, sir.

Q. And as to those which you say were before your time, had you seen those previous and in connection with your employment? A. Yes, sir.

Q. Were all of those records records which were maintained there in the course of the various businesses to which they refer? A. Yes, sir.

Mr. Gillen: Of course, he couldn't answer as to those he didn't prepare himself or familiar with.

The Court: Read the question.

(Question read.)

Mr. Gillen: My point is that some of those were prepared before he became identified with the organization.

The Court: Objection overruled. Answer the question.

(Testimony of Harold H. Maundrell.)

(Question read.)

A. I can only answer that as to the inventories that I made up personally or had made under my supervision. I notice just one, at a glance, made up January 1, 1945. I would not be employed there at that time.

Q. Well, will you answer this—was that a record which you found there among the books and records when you accepted your employment?

Mr. Gillen: Objected to as leading and suggestive. [1320]

The Court: Objection overruled.

A. Yes, those were the records that were turned over to me by Mr. Slater.

Q. And you have previously identified Mr. Slater as the bookkeeper from whom you took over, is that correct? A. Yes, sir.

Mr. Campbell: I will offer these in evidence as government's Exhibit 118.

Mr. Gillen: May we see them?

Mr. Campbell: Oh, I beg your pardon. I thought you had seen them when they were marked for identification.

Mr. Gillen: May it please the Court, as to this entire exhibit, we offer the usual objection as has been heretofore made, that the exhibit is improperly before the Court for the reasons heretofore given, and then as to the specific portions of the exhibit referred to as "inventories" that were put there, not either by Mr. Maundrell or under his

(Testimony of Harold H. Maundrell.)
supervision, but prepared by some other person, we offer the objection that no proper foundation has been laid as to those.

The Court: Objection overruled and Exhibit 118 is admitted in evidence.

Q. I believe you stated, did you not, Mr. Maundrell, that these represented inventories of various businesses and on the dates set forth, is that correct?

Mr. Gillen: Objected to as asked and [1321] answered.

The Court: Objection overruled.

Mr. Gillen: The exhibits speak for themselves and as to certain of those exhibits, he said he couldn't state when they were made.

The Court: Objection overruled.

A. I can only answer that by stating that the inventories that were made under my supervision or by myself would be as of the dates marked on the inventories, but there are inventories here that I had nothing to do with.

Q. But after your employment, did you personally take the inventories? A. Yes, sir.

Q. I am going to show you plaintiff's Exhibit 120, check dated December 2, 1946, payable to Wm. E. Kyne, in amount of \$16,005.50, signed Menlo Club, the signature of William E. Kyne and the endorsement of William E. Kyne, with the notation on the front in handwriting, "Loan for Transit," and ask you if you ever saw that check before?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. When was the first time you ever saw it?

A. The date it was drawn.

Q. Now with respect to this check, did you make any entry in the books of the Menlo Club?

A. No, sir. Mr. Kyne had charge of that. He kept those entries himself. [1322]

Q. Now as I understood you, on December 2, 1946, you were keeping the records of the Menlo Club?

A. Yes, sir, but that particular account on the Menlo Club was handled by Mr. Kyne. I had nothing to do with that.

Q. Did the account which was handled by Mr. Kyne and against which this was drawn, was that entered into the Menlo Club record which you kept?

A. No, sir.

Q. So that books or ledgers of the Menlo Club which you have identified as keeping here, I take it, would have no reference to this check; is that correct?

A. No, sir.

Q. Now do you know the source of the funds which went into the bank account of the Day-Night funds under the name of the Menlo Club?

A. Those were the funds from the Menlo Club.

Q. Were you given any record as to the amount of those funds?

A. Only from the poker sheets that I received each day which were recorded in the books of the Menlo Club.

Q. Did you ever check the poker sheets which

(Testimony of Harold H. Maundrell.)

you received with the amount of monies which were being placed in the bank account?

Mr. Gillen: Objected to as asked and answered this morning.

The Court: Objection overruled.

A. No, sir. [1323]

Q. Did you ever examine the bank account, for the purpose of determining whether or not all of the money reflected in the poker sheets was deposited there?

A. No, sir.

Mr. Campbell: You may cross-examine.

Cross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, you were educated as a lawyer, were you not?

A. Yes, sir.

Q. And practiced law for a time in California?

A. Yes, sir.

Q. And still maintain your status as a licensed practitioner under the State Bar of California; is that right?

A. Yes, sir.

Q. And aside from your association with the enterprises that we have been discussing here, did you engage in the management of any other hotels or restaurants other than Cal-Neva and places we have talked about here?

A. Yes, sir.

Q. Will you relate what enterprises you have been identified with during the years and what capacity?

A. Well, I was executive manager for Mr. Cliff for the Cliff Hotel for a number of years.

Q. In San Francisco? [1324]

(Testimony of Harold H. Maundrell.)

A. Yes, sir. Assistant manager of the St. Francis Hotel.

Q. In San Francisco?

A. Yes, sir. I was manager of the Amona Mission Inn about six years.

Q. At Boyes Springs in California?

A. Yes, sir. Manager of the Antlers Athletic Club in Oakland four years.

Q. Similar to the Olympic Club in San Francisco?

A. Yes, sir. I had an operating agreement in the management of a hotel in Palm Springs for two years, called the Colonial.

Q. That is Palm Springs, California?

A. Yes.

Q. Now in addition to the restaurant enterprises which you mentioned here, such as Cal-Neva, Tiny's Waffle Shop, have you ever managed any other restaurants and been identified with them?

A. Cliff Hotel, I had direct charge of the dining room.

Q. Were you identified with the Trader Vic enterprises?

A. Well, in Honolulu I was a partner there. That is how I happened to go to Honolulu in '48.

Q. That is how you happened to leave Mr. Remmer's association to take over the partnership of Trader Vic; is that correct?

A. That's right.

Q. Now you presently own your own restaurant,

(Testimony of Harold H. Maundrell.)

known as Maundrell's on Waikiki Beach; is that correct? [1325] A. That is correct.

Q. Mr. Maundrell, you were asked this morning by Mr. Campbell whether or not you had furnished any information to assist in the preparation of individual income tax returns for Mr. Remmer and his wife, Mrs. Helen Remmer, and you stated, as I recall, that you had furnished some information and had had conversations with Mr. Mooney with reference to the 1945-1946 individual income tax returns of Mr. Remmer and Mrs. Helen Remmer; is that correct? A. That is correct.

Q. While Mr. Campbell is examining that document, I will ask you whether or not——

The Court (Interceding): I think we had better wait until Mr. Campbell finishes his examination.

Mr. Gillen: I will ask that this be marked for identification.

Q. I ask, Mr. Maundrell, if you recall having any written correspondence with Mr. Mooney with regard to the individual income tax returns of Elmer Remmer and Helen Remmer?

A. Yes, I believe Mr. Mooney wrote me and——

Mr. Campbell: We object, the correspondence is the best evidence.

The Court: This portion of your answer may stand.

Mr. Campbell: I mean the further answer.

Q. Do you recall writing him? [1326]

A. I may have, but——

Q. I show you here what purports to be a carbon

(Testimony of Harold H. Maundrell.)

copy of letter and it has been marked as defendant's Exhibit for identification "X." I will ask you to examine that, please, and tell us whether or not that refreshes your recollection as to whether you at any time wrote to Mr. Mooney on that subject or topic? A. Yes, I did.

Mr. Gillen: I will offer the letter, may it please the court, as defendant's Exhibit "X" in evidence.

The Court: It may be admitted in evidence.

Mr. Campbell: Mr. Gillen, I presume you are going to lay it further that it was sent to Mr. Mooney?

Mr. Gillen: All right.

Q. Do you recollect whether or not the original of this letter was sent to Mr. Mooney?

A. Yes, I remember the incident.

Mr. Gillen: With the Court's permission, I would like to read this letter to the jury at this time.

The Court: Yes, sir.

Mr. Gillen: The carbon copy of the letter is dated March 12, 1947, Mr. Pat Mooney. (Reads Exhibit "X.")

Q. Now the data that you have referred to here, relative to the individual income tax returns of Elmer Remmer and Helen Remmer, you obtained, did you not, depending upon what year it was, from Mr. Kyne, Mr. Slater, the public accountant, [1327] now deceased, who prepared the accounts of the various enterprises from the inception of the Menlo Club, and Mr. Ayton, who prepared the Menlo Club

(Testimony of Harold H. Maundrell.)

returns, and whatever other records were furnished you in the way of daily sheets, etc.?

Mr. Campbell: Objected to as a compound question.

The Court: Do you understand the question?

A. Yes, sir.

The Court: You may answer it.

A. I received my data from Mr. Slater and from Mr. Ayton for filing of the different income tax returns.

Q. Now, Mr. Maundrell, can you tell us in detail what your personal duties were in connection with these various enterprises from the time you went to work?

A. Well, when I was first approached by Mr. Remmer, I was in Beverly Hills at the time and he told me that he——

Mr. Campbell (Interrupting): I am going to object as not responsive. He was asked what certain duties were.

The Court: Don't state what Mr. Remmer told you—I withdraw that remark—just proceed and state the duties.

A. Mr. Remmer asked me to go to San Francisco to take care of the Menlo Club, Tiny's Waffle Shop and Menlo Bar. He was about to purchase the same. This was my first conversation with him——

Q. Those three enterprises in one had not yet been acquired?

A. Not at the time, not consummated. [1328]

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Objected to as not responsive to the question. He was asked to enumerate the duties he had to perform. He is referring now to various conversations he had with Mr. Remmer.

The Court: Just state your duties, Mr. Maundrell, please.

A. I was to take care of the books. I was to take care of the supervision of the Waffle Shop; I was to take care of all the inventories.

Mr. Campbell: Same objection. He is stating what he was supposed to do. The question calls for what he did.

The Court: Objection overruled. He may proceed.

Mr. Gillen: I think he is trying to tell us that later additional work was put on his shoulders.

The Court: You may proceed.

Q. Try to confine yourself to what your actual duties were, what you did.

A. Take care of all pay roll accounts for the three different branches of the Menlo Club; take care of all filing of tax—

Q. When you say pay roll accounts, you mean you prepared deductions and so on necessary for social security?

A. Prepared income returns, old-age pension returns, social security returns; had to do all those things that were pertaining to the business such as the bar and the coffee shop and the card room.

Q. How many employees were there in the

(Testimony of Harold H. Maundrell.)

Menlo, the three [1329] entities in one, approximately, if you recall?

A. I don't recall how many.

(Jury and alternate jurors admonished and noon recess taken at 11:45.)

December 27, 1951, 1:30 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumed the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, at the close of the morning's session, I believe I had questioned you regarding the recollection on your part as to how many employees there were whose pay roll and social security deductions and so on you took care of during the time that you were working there?

A. Well, it was approximately about the Menlo——

Mr. Campbell: Do I understand that is an overall territory during the time he came and left, or a particular time?

Mr. Gillen: I was going to break it down.

Q. I mean the average pay roll, and by that I might tell you, to assist your memory, you can

(Testimony of Harold H. Maundrell.)

break it down as to the three Menlo units you took care of.

A. I would say the three Menlo units altogether 200.

Q. About 200, you believe?

A. Yes, sir. [1330]

Q. How many of those businesses ran 24 hours a day?

A. The Menlo Club, Tiny's Waffle Shop, the Bar from eight in the morning until two in the morning, closed at two o'clock.

Q. So that in the three Menlo units, that is, the social club, the bar and Tiny's Waffle Shop, there were approximately 200 employees; is that correct?

A. Yes, sir.

Q. Now when you originally became associated with the Menlo units, was that originally supposed to be your exclusive employment?

A. Yes, sir.

Q. Subsequently, did you undertake to look after the books and pay rolls of other units, other enterprises?

A. Yes, sir.

Q. And those were what—the Day-Night Cigar Store?

A. Yes, sir; 110 Eddy and afterwards the Transit Smoke Shop.

Q. The Transit Smoke Shop; and how soon after you became identified with the Menlo Club did you take over the additional work?

A. Not until 1946.

Q. Now you went to work in what, May of 1945?

(Testimony of Harold H. Maundrell.)

A. Yes, sir.

Q. And then within the year you took over these other obligations, these other enterprises?

A. Yes, sir. [1331]

Q. How many additional employees did that make, approximately? I don't expect you to remember exact.

A. Made about 60 or 65, approximately; I don't know the exact number.

Q. Now would it be a fair estimate, in your opinion, based upon your recollection, Mr. Maundrell, to say that when you were looking after all those enterprises that you handled a pay roll or pay rolls, and also the government deductions, for approximately 260 employees?

A. Yes, I would say that is about right.

Q. Now, Mr. Maundrell, you were assisted in that work, of course, by the managers of the various enterprises; is that correct? A. Yes, sir.

Q. And after you had done your work of looking after the pay rolls and making the deductions and so on, then so far as returns were concerned, you were assisted by the public accountants; is that correct? A. Yes, sir.

Q. And those public accountants, as I recall, were Mr. Ayton for the Menlo enterprises, and Mr. Slater for the other organizations?

A. Well, Mr. Ayton also assisted in the other enterprises, and then for 1945 returns I had the assistance of a Mr. Shaw, who was also an accountant.

(Testimony of Harold H. Maundrell.)

Q. Was he connected with either Mr. Ayton's or Mr. Slater's [1332] office? A. No, sir.

Q. I see. He was an independent accountant. Now did the defendant, Elmer Remmer, during any of the time that you were employed there, from 1945 to 1948, carrying on the duties that you described here, did he at any time have anything to do with the matter of keeping the records or keeping the books or preparing any returns or pay rolls or anything of the sort? A. No, sir.

Q. Did the defendant, Elmer Remmer, ever direct you concerning how the books should be kept or should be charged where, or anything of that sort? A. No, sir.

Q. The matter of the checks that you issued, Mr. Maundrell, and which have been mentioned during the course of your testimony here, and how you charged those checks up to the various accounts, was that done on your own initiative and according to your best judgment as to how the books should be set up and how the charges should be made?

A. Yes, sir.

Q. And without the suggestion of Mr. Remmer or anyone else?

A. He made no suggestions whatever.

Q. Now if I recall your testimony as you described it, Mr. Maundrell, with regard to the social clubs or the cards rooms, each card room, namely, the Menlo Club, the 186 Club, operated [1333] 24 hours a day; is that correct? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. And there were three shifts of employees headed by three cashiers; is that correct?

A. Yes, sir.

Q. And then there was an over-all manager; is that true? A. Yes, sir.

Q. Now the so-called daily sheets, or poker sheets, that have been referred to here, they were prepared by whom?

A. They were prepared by the cashier on his particular shift.

Q. In other words, each cashier worked eight hours; is that correct? A. Yes.

Q. And at the beginning and end of his time he made out his sheets; is that correct?

A. Yes, sir.

Q. As to money taken in, receipts and disbursements; is that true? A. Yes, sir.

Q. And showed the balance at the end of his time? A. Yes, sir.

Q. And the next man took up from there, I take it; is that correct? A. Yes, sir.

Q. And those were the sheets that were ultimately turned over [1334] to you, from which you obtained the information that you put in the books?

A. Yes, sir.

Q. Now do you know of your own knowledge, Mr. Maundrell, how the markers or IOU's were treated on the accounts?

Mr. Campbell: I do not understand that question, treated on the books of account?

Mr. Gillen: I am asking how they were treated on the poker sheets and carried on the books.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Objected to. The question is compound.

The Court: We will see if the witness understands it. Do you understand the question?

A. May I have the question again?

Mr. Gillen: I will withdraw the question. I can break it down very easily, your Honor.

Q. You were shown this morning, Mr. Maundrell, some poker sheets or daily sheets; do you recall that? A. Yes, sir.

Q. And I take it those were the sheets that you have described as the sheets which were kept by each cashier on his shift; is that correct?

A. Yes, sir.

Q. And those sheets showed the bank roll he took over when he came on duty and when he left?

A. Yes, sir. [1335]

Q. And it showed any charges in the intervening eight hours while he was on duty?

A. Yes, it did.

Q. Now do you recall Mr. Campbell showing you a list of names on the right-hand side of the page and asking what they referred to?

A. Yes, sir.

Q. And you said IOU's or markers; in other words, names of men who owed money to the Menlo Club or 186 Club, as the case might be; is that correct? A. Yes, sir.

Q. Now do you know, of your own knowledge, how those markers or IOU's were treated on the poker sheets first?

(Testimony of Harold H. Maundrell.)

Mr. Campbell: Objected to as unintelligible, how they were treated on the sheets. He testified they were put on the sheets.

The Court: Clear that up a little bit as to what you mean by treated.

Q. How were they looked upon and put down, as cash or obligations, or what?

A. They were put down as an obligation against the person whose name was on the sheet.

Q. An obligation against the person, but was that treated as part of the cash bank roll?

A. Oh, yes; that was part of the ten thousand dollar bank roll. [1336]

Q. Now let me see if I got it clear. I said treated—I meant to convey how was it recognized or put down. If the cashier had a full ten thousand dollar bank roll when he came on duty and two thousand dollars worth of markers were taken during his eight hours, the bank roll would still show ten thousand dollars at the end of his eight hours, provided there were no other changes, eight thousand being in cash and the other two thousand put down as part of the bank roll as IOU's or markers; is that correct? A. That's right.

Q. So to reduce it to a word, whatever the bank roll was included the markers?

A. That's right.

Q. Now, Mr. Maundrell, when you obtained these sheets and when you obtained from the bars the cash register tapes and when you entered whatever was reflected in those records in your books,

(Testimony of Harold H. Maundrell.)

were they, to the best of your knowledge and belief, an accurate and true account of the financial status of the particular enterprise? A. Yes, sir.

Q. Now do you recall, Mr. Maundrell, that reference has been made here in the course of your examination, I believe, to the original 1945 return for the Menlo Club; do you recall that?

A. Yes, sir.

Q. I am going to show you prosecution's Exhibit 89, [1337] Mr. Maundrell, and ask you to look particularly at a letter attached thereto, directed to the Collector of Internal Revenue, San Francisco, California, under date of May 10, 1946, and signed Elmer F. Remmer by initial "M," which I believe you identified as your handwriting. Do you recall the incident of the writing and attachment of that letter to the Menlo Club return of 1945?

A. That is an amended return.

Q. I beg your pardon?

A. I believe it was an amended return.

Q. I may have been in error saying that you identified that as your handwriting. I believe a previous witness identified it as your handwriting, Mr. Kyne. Will you look at that now and tell us whether or not the name under the signature line, Elmer F. Remmer by "M," is your handwriting?

A. Yes, sir.

Q. I believe you said it was an amended return. It does not appear to be designated an amended return. However, Mr. Maundrell, this is the return

(Testimony of Harold H. Maundrell.)

for the Menlo Social Club, the Menlo Bar and Tiny's Waffle Shop, all in one; is that correct?

Mr. Campbell: Is that an amended return?

Mr. Gillen: It does not say. I think he is in error about that.

A. I made an error on that. I was thinking of another one that was attached to an amended return. No, that is correct.

Q. You were thinking, were you not, Mr. Maundrell, of a [1338] statement that you attached to a return referring to an amortization arrangement?

A. Yes, that is right.

Mr. Gillen: Now with the Court's permission, I would like to read this letter and to invite the witness' attention and recollection to the incident that gave rise to the writing of this letter. This letter, which is part of prosecution's Exhibit 89 in evidence, is typed at the top, Menlo Club, 30 Turk Street, San Francisco, May 10, 1946, Collector of Internal Revenue: (Reads from Exhibit 89.)

Q. Does that refresh your recollection as to what happened in connection with those particular records, Mr. Maundrell?

A. Well, in 1945 I was dividing my time between the Menlo Club and Cal-Neva Lodge for the summer period. The poker sheets were taken over to the office and they were put in a box.

Q. What kind of box?

A. Some boxes that had liquor in them, size of a whiskey box.

Q. Were they wooden boxes or cardboard?

(Testimony of Harold H. Maundrell.)

A. Cardboard boxes, and they were put in the warehouse at 52 Mason. At that time my office was a front portion of the warehouse at 52 Mason. Then later on we started to build a new office at 52 Mason Street and during that period of time, while we were building, the poker sheets were put in those same boxes in the warehouse after the new offices were completed and we moved in, sometime in the latter part of October, [1339] I believe, or beginning of November; I have forgotten the date.

Q. Was that in 1945?

A. In '45. The warehouse, which was in such a terrible state—I mean it was very neglected and it had a great many boxes filled with sheets from the B & R Smoke Shop, sheets which registered bets, etc., and had accumulated there for a period of years, and these boxes were all in the warehouse and the boxes with the sheets, the poker sheets, were also in the warehouse—

Q. That is the 1945 Menlo sheets?

A. That's right—right next to these other boxes. We had a sort of a flood there. This warehouse was underneath a three-story hotel and someone had turned on the water in their bathtub and the water didn't run, it was turned off at the time, but they left their faucet open and had left and the water flowed up over the bathtub and for some period of time went right down in our room where we had all the records stored, plus these other boxes, and the water dripping over these boxes, a great many of them were broken, fell to pieces, some of the

(Testimony of Harold H. Maundrell.)

liquor dropped on the floor, a few bottles were destroyed, so I decided I wanted to clean this whole room up and in doing so I got hold of a man we called John the Doorman and asked him if he would clean up the whole room and fix the cases in the proper way, etc., and to get rid of all the old race track sheets and all the rest of the junk that was in the place and clean it all out, and in doing so he called in the scavenger department and [1340] he cleaned the whole room out and he cleaned out along with it the boxes that had the poker sheets in it, not knowing that they had a relative value at that time.

Q. Mr. Maundrell, then the statement that you wrote to the Collector of Internal Revenue, to the effect that you had used the receipts and promotion expenses for a like period of the preceding year of 1944, did you resort to the accounts that had been kept by the predecessor of the new bars, Mr. Remmer and his partners?

A. Mr. Ayton, who had charge of the books for the previous owner for a period of ten years or more——

Mr. Campbell: I submit this statement he is launching into is not answering the question.

The Court: Read the question.

(Question read.)

The Court: Answer that yes or no.

A. Yes, sir.

Q. From whom did you get that data?

(Testimony of Harold H. Maundrell.)

A. Mr. Ayton.

Q. Mr. Ayton had been the bookkeeper for the predecessor of Mr. Remmer and his partners for a period of some ten years, had he not?

A. Yes, sir.

Q. So he had the 1944 records available; is that correct? A. Yes, sir. [1341]

Q. And was he the one who prepared them, based on the preceding years? A. Yes, sir.

Q. I notice that you mention in your statement that some records you did have available and you used those original records that were available for 1945, is that correct, such as disbursements for rents, salaries, wages, cards, and miscellaneous other expenses? A. Yes, sir.

Q. Now, Mr. Maundrell, during the time that you were acting in the capacity that you have described here, agents of the Internal Revenue Department interviewed you, did they not?

A. Yes, sir.

Q. Concerning the affairs of the Menlo Club and the other enterprises? A. Yes, sir.

Q. Who were those agents, by the way?

A. Well, the first agent, as I remember, was Mr. Ezralow, and then after that Mr. Morgan and another gentleman, I am not sure if his name is Poole or not; Mr. Morgan originally and also a little later on by Mr. Harkness.

Q. Now did you discuss with any of those agents the statement that had been sent in with the 1945 return of the Menlo Club, the manner in which you

(Testimony of Harold H. Maundrell.)
happened to arrive at certain of the figures? [1342]

A. No.

Mr. Campbell: Objected to as incompetent and immaterial, discussions he had with the agents.

(Question read.)

The Court: Answer yes or no.

A. No, sir.

Q. Did any of those agents, or anybody from the Internal Revenue Department, ever tell you that there was anything wrong about that statement and the manner in which you arrived at certain of the figures in the 1945 return?

Mr. Campbell: Objected to as incompetent and immaterial, calling for hearsay, and the ultimate fact, what we are interested in here, is not statements made back and forth by the agent and this witness, if there was any such conversations.

The Court: Objection sustained.

Q. Well, did anybody ever reject this 1945 return or statement that you made concerning it?

Mr. Campbell: Same objection, same grounds.

The Court: Same ruling, objection sustained.

Mr. Gillen: Your Honor, this case is made up almost exclusively on circumstantial evidence—I should say exclusively—and return is made in a certain way. I think we should be told whether there was any rejection on the grounds this was wrong. There was testimony regarding one enterprise that it should be set up as a corporation rather than a partnership. [1343]

The Court: I will let him answer the question.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: May I be heard on that question, if the Court please?

The Court: Very well. We will send the jury out.

(Jury and alternate jurors admonished and excused at 2:00 p.m.)

(In the absence of the jury.)

(NB 328, pp. 81-91.)

The Court: Objection will be sustained. Bring in the jury.

2:20 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, you recollect, do you not, that during a considerable portion of your direct examination Mr. Campbell showed you check stubs and in many instances checks, wherein various accounts or bills were paid by you; do you recall that?

A. Yes, sir.

Q. And then in connection with those checks and check stubs he asked you how they were set up, where they were charged on various ledgers to vari-

(Testimony of Harold H. Maundrell.)

ous enterprises, how they were reflected on the ledgers; do you recall that?

A. Yes, sir. [1344]

Q. Now in one particular instance I recollect—and I am going to hand you the exhibits which make up the check stubs, which I think have been identified as prosecution's Exhibits 132, 133, 134, 135 and 136—do you have these in mind, counsel?

Mr. Campbell: Yes, I have those—those are Crocker First National Bank.

Q. I will leave these available to you, in case you wish to refer to them, Mr. Maundrell. Do you have a recollection there was one question asked you this morning concerning the manner in which there was reflected, either on your check stubs or on the ledger or both the payment of checks to a refrigeration company for installation of the bar, or portions of bar equipment at the Menlo Bar; do you recall that? A. Yes, sir.

Q. And I believe you stated that your books reflected that you had charged those to repairs and replacements; is that correct? A. Yes, sir.

Q. Now in that particular instance, did anybody tell you how to charge those? A. No, sir.

Q. Did you charge them as repairs and replacements based upon your own personal judgment as to how they should be set up? A. Yes, sir.

Q. Now had there been a bar at the Menlo Bar and some bar [1345] fixtures prior to the time that this installment was made? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. And was the installment that was made a replacement of what had been there before?

A. Yes, sir.

Q. For what reason? For the reason that the previous bar was out of repair or in bad condition?

A. Well, it was worn out; it was leaking, in bad shape, and needed entirely new replacements.

Q. And you replaced the equipment; is that correct? A. Yes, sir.

Q. And you charged that up as a repair and replacement; is that true? A. Yes, sir.

Q. Now with reference to the other charges that you made, Mr. Maundrell, did you in each instance act upon your own best judgment as to how they should be accurately reflected in your records?

A. Yes, sir.

Q. Now were you ever at any time told by the defendant, Elmer Remmer, or anyone else, to charge those charges a certain way, or were all those charges made based upon your judgment as to where they accurately belonged? A. Yes, sir.

Q. What is your answer—it is rather a confusing question? [1346]

A. Based upon my own judgment.

Q. Now I recall on Friday you were asked concerning bills that were paid on behalf of Mr. Remmer, and I believe in a number of instances you said you had charged those to Mr. Remmer's private account; is that correct? A. Yes, sir.

Q. I believe one of those was an insurance bill for some insurance on the home or some personal property; is that correct? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. And in another instance there was—I don't have in mind the other bills now, but there were two or three instances where you did state that you charged those to Mr. Remmer's personal account; is that correct?

A. Yes, there were a few bills that were charged to his account.

Q. In other words, if it was an expense that had nothing to do with the business, but rather had to do with Mr. Remmer's affairs, it would not be charged to his business affairs but charged to his personal account as personal expense; is that correct?

A. That is right.

Q. And of course you had in mind that business expenses were deductible and personal expenses were non-deductible expenses under the income tax law; is that correct?

A. That's right.

Q. When you did make these classifications of expenses and paid these bills, to the best of your knowledge, your best [1347] judgment, that was where they should have been classified?

Mr. Campbell: Objected to as asked and answered.

The Court: He may answer the question.

A. Yes, sir.

Q. Now I will hand you here, Mr. Maundrell, prosecution's Exhibit 91 in evidence, which is the amended partnership return of the Menlo Club for 1946, together with defendant's Exhibit I for identification, and I will ask you to refer to them so you may possibly refresh your recollection in connection

(Testimony of Harold H. Maundrell.)

with the next question which I will ask you. I will ask you to look at these documents and tell us whether or not you recall preparing the statement that has been designated defendant's Exhibit I for identification to be attached to the amended return for the Menlo Club?

The Court: Read the question.

Mr. Gillen: I would like to withdraw that question. It has erroneous data in it.

Q. You have in your hand the amended return for the Menlo Club for the year 1946. I will ask you whether or not you recall the incident of having proposed to you a statement to be submitted with that return and the previous year's return, the proposed statement being defendant's Exhibit I for identification?

Mr. Campbell: I am going to object to that question, if the Court please; Exhibit I for identification is not here in [1348] evidence. There has been no foundation laid and the question, I think, is incompetent, in that it asks him to compare an exhibit which is in evidence with an exhibit with which he has not heretofore testified any familiarity and asks him to draw a conclusion therefrom, and I object on the grounds the question is incompetent for that reason.

The Court: You asked him to compare——

Mr. Gillen: No, I am not asking him to compare. I am asking him if he recalls receiving such a proposed statement as is before the Court for identi-

(Testimony of Harold H. Maundrell.)

fication, with the suggestion that it be attached to the return which is in evidence, Exhibit 91.

Mr. Campbell: Objected to further, it calls for him to state whether he received a similar document to Exhibit I for identification, which, of course, is not in evidence, and prior to any foundation laid that he has either seen it or has knowledge of it.

Mr. Gillen: Perhaps I can clarify this for everybody if I remind your Honor and counsel that the witness Mooney, called by the government, was shown this Exhibit I for identification and he testified, and it is in the record, that he mailed that to Mr. Maundrell, or submitted it to Mr. Maundrell as a proposal, proposed statement, to be attached to the amended return of 1945 and 1946. I am not endeavoring to complete the foundation for admitting that in evidence. [1349]

Mr. Campbell: Then I think we can have a direct question here, whether he ever saw it and where it came from.

Mr. Gillen: In the interest of time, I can withdraw it.

The Court: What I had in mind, this suggestion from somebody else that was embodied in that question. Go ahead, Mr. Gillen.

Mr. Gillen: Let me ask this question, which may not be objectionable.

Q. Mr. Maundrell, would you look at defendant's Exhibit I for identification and tell us whether or not you ever saw that same statement before?

(Testimony of Harold H. Maundrell.)

A. I do not remember seeing this statement.

Q. Do you recall receiving from Mr. Mooney a proposed draft of a statement to be submitted with an amended return for the Menlo Club, requesting an amortization arrangement for income tax returns?

A. I remember sitting down with Mr. Mooney and discussing it.

Q. And do you remember that Mr. Mooney sent you a proposed statement of what he thought should be put in that and do you remember, instead of taking Mr. Mooney's statement, that you prepared a statement of your own? A. Yes, sir; I did.

Q. Now will you take a look at Exhibit 91 and see if there is not attached to Exhibit 91, which is the 1946 Menlo Club amended return, the statement that you prepared yourself [1350] instead of accepting the proposed statement of Mr. Mooney?

A. Yes, sir.

Mr. Gillen: I would like at this time, may it please the Court, to offer defendant's Exhibit I in evidence.

Mr. Campbell: Objected to on the ground no proper foundation laid. The witness stated he has no recollection of having seen——

The Court: I have not seen any connection between the statement prepared by this witness, as he recollects, as being part of the exhibit, part of Exhibit I.

Mr. Gillen: I will ask one or two more questions.

Q. You say you have a recollection of sitting

(Testimony of Harold H. Maundrell.)

down with Mr. Mooney and discussing an amortization plan for the Menlo Club to be used in connection with the returns? A. Yes, sir.

Q. And what was the proposal of Mr. Mooney?

Mr. Campbell: Objected to——

The Court: Objection sustained.

Q. What was the amortization plan supposed to do?

Mr. Campbell: Objected to. The return and statement of the witness thereto speaks for itself. The books speak for themselves.

The Court: Let me have the question.

(Question read.)

The Court: Objection sustained. [1351]

Mr. Gillen: Well, here is a man who prepared this statement, your Honor, that accompanied as part of Exhibit 91.

The Court: That statement is in evidence, will speak for itself, but I can't see what that has to do with Exhibit I.

Mr. Gillen: I would be very happy to explain to your Honor what it has to do with Exhibit I. Exhibit I was proposed by Mr. Mooney as to how a request for an amortization plan could be submitted to the Collector of Internal Revenue, in order to adjust payment of income tax as to the club to amortize investment over a period of years. Instead of taking and accepting that and using it, Mr. Maundrell prepared a more comprehensive statement himself, based on the suggestion of Mr. Mooney.

(Testimony of Harold H. Maundrell.)

The Court: But Mr. Maundrell stated he had never seen the Exhibit I.

Mr. Gillen: He stated he did not recall seeing I.

The Court: Yes.

Mr. Gillen: Now I am asking him whether or not he knew what this amortization statement was supposed to do in the way of any adjustments on income tax returns.

Mr. Campbell: My objection is, so far as Exhibit 91 is concerned, a statement attached thereto, that is in evidence and speaks for itself.

The Court: Objection sustained. [1352]

Mr. Gillen: I have a recollection, your Honor, that this morning Mr. Campbell pursued a number of questions based on recollection of the witness rather than the exhibits themselves, and his reasons for doing certain things.

The Court: I think that was a little different situation than this.

Mr. Gillen: All right.

Q. When you prepared this statement, which is attached to the 1946 amended partnership return of the Menlo Club, for what reason did you prepare that and submit it with the amended return?

Mr. Campbell: Objected to as incompetent, if the Court please.

The Court: You may answer the question.

A. Well, at that time I believed they were entitled to an amortization over a period of five years on the purchase of the Menlo Club.

Q. Now will you tell us what you mean by say-

(Testimony of Harold H. Maundrell.)

ing that you believed you were entitled to an amortization over a period of five years?

Mr. Campbell: Objected to as asking for a statement or exposition of argument by the witness. The document speaks for itself.

The Court: He may answer the question.

(Question read.)

A. I had been informed by Mr. Mooney that in cases of clubs [1353] or businesses such as the Menlo Club, that we could amortize the business over a period of five years because of the fact that it was a very precarious business. It was a business that could be outlawed perhaps at any time. A new ordinance at that time was being drafted in San Francisco and also the State legislature drafted a new law——

Mr. Campbell: I object to that.

Mr. Gillen: I think the answer should be completed.

Mr. Campbell: I wish to renew my objection to this type of answer and explanation, if the Court please, based upon hearsay, as giving arguments and conclusions. I do not think this type of answer is competent.

Mr. Gillen: May it please the Court, we have a statement I am going to read to the jury in a moment, introduced by the prosecution itself.

Mr. Campbell: I say that is the best evidence.

Mr. Gillen: All right. You pursued a lot this morning that wasn't the best evidence. We are

(Testimony of Harold H. Maundrell.)

going to read this to the jury, with the Court's permission, of course, but I see nothing in Mr. Maundrell's answer that is objectionable.

The Court: I think he has answered the question now.

Mr. Gillen: I don't know. He was cut off in the middle of a word.

The Court: Any further answer you want to make to that question? [1354]

A. Well, there are quite a few circumstances, although I believe the statement itself is complete.

Mr. Gillen: With the Court's permission, I am going to read the statement that was submitted with the amended return for 1946 of the Menlo Club, which is designated here as prosecution's Exhibit 91.

Mr. Campbell: What is the date of that document?

Mr. Gillen: It is an amended return for 1946, 1946 return — May 2, 1947. That is when the amended 1946 return was prepared. The statement reads as follows: (Reads Exhibit 91.)

Q. Now was that statement prepared by you and submitted with that return for amortization consideration to the Collector of Internal Revenue?

A. Yes, sir.

Q. Was there also a similar statement attached to the 1945 amended return, the previous year?

Mr. Campbell: I submit that the return would be the best evidence. Is that in evidence?

Mr. Gillen: Where is it?

Mr. Avakian: We are looking for it and can't find it.

Mr. Campbell: May I suggest a recess at this time?

(Jury and alternate jurors admonished and recess taken at 2:50.)

3:05 P.M.

(Defendant present with counsel.) [1355]

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Mr. Campbell: At counsel's request, we have produced the amended return of the Menlo Club, an amended partnership return of 1945, which I will ask to have marked for identification.

The Clerk: Plaintiff's 141.

Mr. Campbell: I have no objection, if you wish to offer it in evidence as defendant's exhibit, having been filed with the Collector of Internal Revenue on the 15th of May, 1947.

Mr. Gillen: We will offer it.

The Court: Exhibit "Y."

Mr. Gillen: That is formerly 141 for identification.

Mr. Campbell: That number will then be removed.

(Testimony of Harold H. Maundrell.)

Mr. Gillen: Now it is "Y" in evidence.

The Court: That is right.

Q. Mr. Maundrell, with the Court's permission, I will show you defendant's Exhibit "Y" in evidence now, which purports to be amended return for the year 1945 of the Menlo Club, and I will ask you to look particularly to the statement attached thereto, which I believe you will find is identical to the statement which I read attached to the amended partnership return of 1946 of the Menlo Club, and ask you if you prepared that statement likewise? [1356]

A. Yes, sir.

Q. And in requesting that consideration for amortization for the reasons that you set forth in that statement, you wanted the depreciation spread over the period of five years; is that correct?

A. Yes, sir.

Q. Mr. Maundrell, with relation to the request for amortization plan as set forth in your statement, attached to the exhibits which you have just looked, prosecution's Exhibit 91 and defendant's "Y," did Mr. Remmer direct you to do this or have anything to do with it, or was it something that you prepared in the belief that you were entitled to such deductions?

Mr. Campbell: Objected to as assuming something not in evidence, that is request for amortization.

The Court: You may answer the question.

A. Mr. Remmer did not have anything to do with it. I discussed the matter with our auditor,

(Testimony of Harold H. Maundrell.)

Mr. Ayton, and we came to the conclusion that was the proper thing to do.

Q. You concluded that that was something to which that enterprise, under the circumstances, was entitled to; is that correct? A. Yes, sir.

Q. In that statement, Mr. Maundrell, you set forth that the Menlo Club had been purchased—and that included, of course, Tiny's Waffle Shop and the Menlo Bar, did it not? [1357] A. Yes, sir.

Q. (Continuing): —that the Menlo Club had been purchased for the total sum of 175 thousand dollars, of which \$31,985.50 was allocated to the investment in furniture and fixtures and merchandise; is that correct? A. Yes, sir.

Q. And the remaining sum of \$143,801.50 toward the capital investment, that is the lease; is that correct? A. Yes.

Q. Now you will recall, Mr. Maundrell, that Mr. Campbell questioned you this morning—I think also on Friday—regarding the transactions, Exhibits 140 and 125, and I will identify those to you as the rewritten ledger page setting up the investment; do you recall that?

Mr. Campbell: Objected to as assuming a fact not in evidence—rewritten ledger page. This witness stated he did not believe he had ever seen the page, Exhibit 125.

Mr. Gillen: I think this has been identified as 125C, this one page of the Menlo Bar and Tiny's Restaurant ledger, and that page is designated "Furniture, Fixture, Equipment and Lease."

(Testimony of Harold H. Maundrell.)

Q. Now I will ask you if it isn't a fact, Mr. Maundrell, that originally, as of April 30, 1945, the capital set-up of the Menlo units purchased set forth that the lease was designated at 100 thousand dollars, the value of the lease, and the fixtures at 75 thousand dollars? [1358]

Mr. Campbell: Objected to on the grounds the books and records speak for themselves.

The Court: I think that is correct.

Q. Showing you prosecution's Exhibit 140, isn't it so that it shows the set-up to be 100 thousand dollars allocated as costs of the lease and 75 thousand dollars as cost of the furniture and fixtures and merchandise on hand? A. Yes, sir.

Q. Now I will show you also prosecution's Exhibit 125C and ask you if this does not reflect a change in those figures, where in the lease cost was placed at 143 thousand odd dollars and the merchandise, furniture and fixtures cost placed at something in the neighborhood of 31 thousand odd dollars?

Mr. Campbell: Objected to on the grounds the record speaks for itself. Further, the witness testified he did not recall ever having seen 125C.

The Court: Then I think it is just a matter of reading the exhibit, isn't it?

Mr. Gillen: Well, this is preliminary in asking how those matters were arrived at, your Honor, and I think Mr. Maundrell testified that the amended or corrected return was done at his direction and under his supervision.

(Testimony of Harold H. Maundrell.)

The Court: You may answer the question.

A. May I have the question?

(Question read.) [1359]

A. Yes, sir.

Q. Both of those pages were set up either by you or under your supervision or direction, isn't that correct? A. Yes, sir.

Q. Will you tell us how the first set-up, as it appears in Exhibit 140, where you first set up the respective costs at 100 thousand dollars for the lease and 75 thousand dollars for furniture, fixtures and merchandise, and then how you subsequently corrected that to 143 odd thousand dollars for the lease and 31 thousand odd dollars for the furniture, fixtures and merchandise?

Mr. Campbell: Objected to on the ground—possibly I am confused—I understand the witness testified he had never seen that paper before and didn't know when it was made.

The Court: He said these records were kept under his supervision and he can answer this question if he knows.

Mr. Campbell: May I ask a question on voir dire?

The Court: Yes, sir.

Q. (By Mr. Campbell): Mr. Maundrell, prior to this trial did you ever see that page, 125C.

Mr. Gillen: May it please the court, we object to that as incompetent, irrelevant and immaterial, whether he ever saw the page. I dictate a lot of

(Testimony of Harold H. Maundrell.)

things to my secretary that I never see after they are dictated, but they are done under my [1360] supervision and direction.

The Court: I think he can answer if he knows.
Objection overruled.

A. I don't remember at the moment that I looked at this particular page.

Q. Did you ever dictate to any one the contents of that page, and if so, to whom?

The Court: I mean the question he can answer, the question asked by Mr. Gillen.

(Last question by Mr. Gillen read.)

A. When I first arrived in San Francisco and met Mr. Schriber for the first time and Mr. Remmer in the Menlo Club, and I asked Mr. Schriber how this set up account of the lease was——

Mr. Campbell: Objected to as not in response to the question that was asked.

The Court: Let me have that question again?

(Question read.)

Mr. Gillen: I submit he is explaining how he got his information to set up the first page and I assume he will explain what brought about his changing that to change the allocation of the amounts.

The Court: He may proceed with his answer.

A. ——as to lease and cost of inventory and he told me the lease was 100 thousand dollars and the cost of the equipment and inventory was 75 thousand dollars. [1361]

(Testimony of Harold H. Maundrell.)

Q. Those were the prices he placed on them for you?

A. The prices he placed on them and I put them in the books at that time.

Q. Now what, if anything, occurred at any later time to cause you to set up a different figure, allocating the respective costs?

Mr. Campbell: Same objection.

The Court: Same ruling. He may answer the question.

A. About maybe two months later—it might have been a little longer than that—the tax department of the State of California came in to see me——

Mr. Gillen: Mr. Maundrell, may I interrupt you—so the jury may be enlightened, it is true in California, in addition to federal income tax, there is also a State income tax, which is handled by the State Franchise Commission, wherein a State sales tax are set?

A. That's right.

Q. When you refer to the California Tax Department, you refer to the agents who handle the matter of the State Sales Tax in the State of California?

A. Well, every time a piece of property like a bar, changes hands, has a sale, the State collects 2½ per cent sales tax on it. It seems that they had not paid the sales tax somewhere along the line, we hadn't done so, so he asked us what the cost of our equipment was and inventory. [1362]

(Testimony of Harold H. Maundrell.)

Q. That was the man from the California State Sales Tax Department?

A. Yes, sir; so I asked him if he would put a value on the property and on the inventory, so he said, "Well, we do that if we have to, that is our business."

Q. Does that Department have regular appraisers that go out and appraise values of properties in addition to figuring California tax sales?

A. Yes, the very next day, or two days later, he came in with another gentleman from the Tax Department, and we went all over the building.

Q. Do you mean the bar and office and Waffle Shop and Menlo bar?

A. And they noted everything in the books they had and finally came to the conclusion that \$31,895.50 was a proper cost of equipment and inventory.

Mr. Campbell: I ask the last be stricken as conclusion of the witness. The report of the record is the best evidence.

The Court: It may stand.

Q. In other words, Mr. Maundrell, the California State Tax man handed you that as their appraisal of the value of the fixtures, furniture and merchandise, is that correct?

A. Yes, sir, and we had to pay tax on that.

Q. And you paid the tax on that?

A. Yes, sir. [1363]

Q. And then the difference between that and

(Testimony of Harold H. Maundrell.)

175 thousand dollars was allocated as the value of the lease, is that correct? A. Yes, sir.

Q. And based on that you deducted those figures in making your statement to the Collector of Internal Revenue on the amortization plan, is that correct? A. That's right.

Q. And the result of that appraisal that was made and those figures that were arrived at, as a result of that you had to pay taxes on 31 thousand odd dollars for merchandise, furniture and fixtures, is that the reason why you set up the new page using the official figures that were given to you by the State of California? A. Yes, sir.

Q. Now, Mr. Maundrell, you have stated here in direct examination, and it has been shown in the exhibits, that when you affiliated yourself with the Menlo units that you became a one-tenth partner, or rather that you became a partner to the extent of 10 per cent in the Menlo Social Club, is that correct? A. Yes, sir.

Q. And did you have an oral agreement originally with regard to your partnership interest?

A. Yes, sir.

Q. And did you at any later time insist upon, or suggest, that those partnership agreements be reduced to writing? [1364] A. Yes, sir.

Q. And did you do that in regard only to your partnership or with regard to the other partners' interests in the Menlo Club?

A. All of the partners had an agreement.

(Testimony of Harold H. Maundrell.)

Q. Now who prepared the written agreements setting forth those partnership returns?

A. Mr. Haughey.

Q. Is that Joseph Haughey, the California lawyer who appeared as a witness here?

A. Yes, sir.

Q. Who assisted him with regard to the details and data what sort of agreement was to be drawn?

A. Why I gave him all the facts and all the data and when they were drawn it was submitted to Mr. Remmer.

Q. And did Mr. Kyne have the same kind of an agreement that you had, with the exception of possibly difference in the amount of interest?

Mr. Campbell: The agreement is here in evidence of Mr. Kyne.

The Court: The agreement will show.

Q. Well, let me ask you this—were all of the agreements the same, with the exception of the difference in a percentage part?

A. Yes, sir.

Q. I will show you here prosecution's Exhibit 130 and hand it to you, with the Court's permission. This is the agreement [1365] that was signed between you and Mr. Remmer, as defining what would be your interest in the Menlo Club, is that not correct?

A. Yes, sir.

Q. Now that sets forth, does it not, that you were to have, retroactive as of May 1, 1945, a 10 per cent working interest in the profits of the Menlo Club, isn't that correct?

A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: I suggest that the document speaks for itself—well, he answered yes.

Q. And it is also provided in your agreement, is it not, that you hold in your hand, that after your profits had reached the equity of 10 per cent of the cost of the purchase of the Menlo unit, to wit, \$17,500, then you would have a one-tenth interest in the physical assets of the property?

Mr. Campbell: Objected to, the document speaks for itself.

Mr. Gillen: He is holding it in his hands. If counsel would rather have me go through the reading again.

The Court: I think it would be better to read that from the document.

Mr. Gillen: I am also thinking of the time involved, your Honor. It will take three-quarters of an hour.

Q. Maundrell, in the original document you hold in your hand it sets forth, does it not, in paragraph 8 thereof: “* * * as of May 1, 1945, first party does hereby assign, transfer, set over [1366] and convey to Harold H. Maundrell, second party herein, a ten per cent working interest in and to the profits derived from the operation of the aforesaid social room and restaurant business situated as aforesaid * * *.” That appears, does it not, on the original agreement? A. Yes, sir.

Mr. Campbell: Same objection.

The Court: The answer may stand.

Q. And that 10 per cent interest, as against the

(Testimony of Harold H. Maundrell.)

total purchase price, required you to build up an equity of \$17,500 out of the profits, did it not?

Mr. Campbell: Objected to as calling for his conclusion or interpretation of the document now before the Court.

The Court: Objection sustained.

Q. Now I will ask you to look at the prosecution's Exhibit 113, which is the Kyne agreement, the photostatic copy of the Kyne agreement, and I will ask you if you will compare this Exhibit with the document that you have before you, which is 130, prosecution's Exhibit 130, and tell us if those two agreements are the same, with the exception of the difference in the name of the party of the second part and the fact that Mr. Kyne had a 15 per cent interest as against your 10 per cent interest?

Mr. Campbell: Objected to, the documents speak for themselves. They have both been read before.

The Court: I think it would show in the documents. [1367] Objection sustained.

Q. Well, to your knowledge, did all the partners receive the same kind of agreement with the exception of difference in percentage?

A. That's right.

Q. Now you have prosecution's Exhibit 125, do you not, the books there? Now, will you take and look at the capital accounts appearing in that book—I can't tell you what page—look at your own capital account.

A. Yes, sir.

Q. And what shows on that?

Mr. Campbell: The books speak for themselves.

Mr. Gillen: Yes, your Honor, I can walk up and

(Testimony of Harold H. Maundrell.)

get the book and read it. The cross-examination is being very badly hampered by these technical objections.

Mr. Campbell: It seems to me these entries could be very quickly read to the jury, if there are any particular entries.

The Court: I can't see any reason why the witness or counsel couldn't read it. It doesn't make any difference.

Mr. Campbell: Very well.

A. May I have the question, please?

(Question read.)

Q. Would you be kind enough to read the first entry and the second entry, and so on, and tell us what those entries mean? [1368]

Mr. Campbell: I object to the general interpretive question of that kind. Reading a document is one thing and interpreting it is something else.

The Court: Yes, just have it read.

Q. Will you read the first entry?

A. The heading Harold H. Maundrell, under that is balance of 1945, shows that I had \$13,003.37 credit, on the books to my account. Second item, June 14, federal income tax under debit, \$3,874.35, which left me a balance of \$9,131.02, and then of the same date, June 14, franchise tax—that is for the State of California, debit \$123.45, leaving a balance on the books of that date of \$9,007.57.

Q. Are those all the entries in regard to you?

A. That is all under Maundrell. The next is Turner.

(Testimony of Harold H. Maundrell.)

Q. Do you have another Maundrell page there of capital accounts? A. No, sir.

Q. I think that same exhibit you will find another Maundrell page. Will you just go through and pick that. I think it was marked 125A.

A. Yes, I have it here.

Q. Now will you read the first entry there?

A. Partners account Tiny's Restaurant, bar and Menlo Club, Harold H. Maundrell, balance 1945, \$13,003.37. 1946 profit 1946 \$8,349.65, leaving a balance of \$21,353.02. June 14 paid out for my account to the Collector of Internal Revenue [1369] \$3,874.35, leaving a balance of \$17,478.67. June 14, franchise tax \$123.45, leaving a balance of \$17,355.22. 1947, 3-12, Collector of Internal Revenue, estimated tax, \$900, leaving a balance of \$16,455.22. 7-29 estimated tax \$900, leaving a balance of \$15,555.22. 9-11, estimated tax \$900, leaving a balance of \$14,655.22. 1948, January 14, estimated tax \$900, leaving a balance of \$13,755.22. January 20, \$7500 drawn, leaving a balance of \$6,255.22; 19th of February \$2500 drawn, leaving a balance of \$3,755.22; February 19, \$2000 drawn leaving a balance of \$1755.22.

Q. Leaving balance due on the books?

A. Yes, sir.

Q. Now when were those items set up under your name as capital account?

A. That is the amount of money I had coming to me from the partnership.

Q. In other words, that is how you kept track

(Testimony of Harold H. Maundrell.)

of your profits derived from your working interest, 10 per cent of the profits of the Menlo unit, is that correct? A. Yes, sir.

Q. And that was how you kept track of how your equity was being built up in the physical assets of that property, is that correct?

A. Yes, sir.

Q. And were there similar pools set up for other partners, showing their equities? [1370]

A. Yes, sir.

Q. Then those were furnished to Mr. Ayton, the public accountant, and were included in the returns, were they not? A. Yes, sir.

Q. Now I will ask you to look at prosecution's Exhibits 89 and 90, which are the 1945 and 1946 income tax returns of the Menlo Club and with particular reference to partnership interests, I will ask you if under Schedule I on each of those if the partnership interests as they appear in the ledger are set forth there? In other words, those partnership interests are reflected on the income tax return, are they not? A. Yes, sir.

Q. Now, Mr. Maundrell, will you explain to the jury what was the working interest that was created between the various partners and Mr. Remmer in the Menlo enterprise?

Mr. Campbell: Objected to on the ground that the document speaks for itself; as calling for conclusion, including legal inclusion, as to the nature of the document.

The Court: Objection sustained.

(Testimony of Harold H. Maundrell.)

Mr. Gillen: I had in mind, your Honor, that this is the man who helped create it and placed it in a crystallized form in writing.

The Court: Yes, but we have the documents here.

Mr. Gillen: That is true, excepting that you had a good deal of difficulty the other day. As your Honor pointed out, [1371] it is a rather complicated document, complicated working arrangement.

Q. It is true, is it not, that you did, between the period of time that was at the starting point of May, 1945, until you withdrew from the organization in 1948, you participated in 10 per cent of the profits of the Menlo Club? A. Yes, sir.

Q. And it is true, is it not, that you drew on your credit to pay your income tax on those profits, is that correct? A. Yes, sir.

Q. And it is true, is it not, that on the occasion of your departure in 1948, your withdrawal from the organization, that you still had a credit on the books, is that correct? A. Yes, sir.

Q. Now let me ask you whether or not you withdrew from the enterprise any cash based on the credit that you had on the books of the organization from the one-tenth working interest in the profits of the organization?

A. Well in the first place I drew down my income tax return.

Q. You did that each year, did you not?

A. Yes, sir, and finally I was paid \$12,000 in cash.

(Testimony of Harold H. Maundrell.)

Q. That was when you withdrew from the organization, is that correct? A. Yes.

Q. Now was there any additional balance on the books that you [1372] left there?

A. Yes, there was.

Q. What was the additional balance you left on the books? A. Seventeen hundred odd dollars.

Q. Did that still remain as a credit in your favor on the books, or did you settle your entire interest for 12 thousand dollars?

A. No, still on the books.

Q. So when you left that organization to go to Honolulu you had some 13 odd thousand dollars credit on the books, is that correct? A. 1700.

Q. I mean before you drew down your 12 thousand, you had 13 or 14 thousand dollars credit coming to you did you not? A. I had \$13,755.22.

Q. And when you pulled out to go to Honolulu you drew down 12 thousand dollars of that in cash, is that right? A. Yes, sir.

Q. And left the balance of \$1700 odd dollars on the books, is that true? A. That's right.

Q. Now you had invested no money in the business in the way of cash? A. No, sir.

Q. You invested your time in the business and had drawn some [1373] salary for several of the enterprises, is that correct? A. Yes, sir.

Q. Now you have stated, Mr. Maundrell, that originally you were supposed to only identify yourself with and do work for the three Menlo enter-

(Testimony of Harold H. Maundrell.)

prises which you referred to, namely, the social club, the bar and restaurant, is that correct?

A. Yes, sir.

Q. But at some subsequent time you were asked to do additional work? A. Yes, sir.

Q. It is true then that you undertook to keep the pay rolls and records, insofar as social security, etc., were concerned, for 110 Eddy, Day-Night Cigar Store, 186 Club, and Transit Smoke Shop, is that true? A. Yes, sir.

Q. And the Transit Smoke Shop, I believe, came into existence in 1946, was it?

A. On the first of November, 1946.

Q. Now, I believe you stated that you did draw some salaries for keeping books from several of these, one or more?

A. 1946 I drew down \$75 from the 110 Eddy, Transit Smoke Shop, Day-Night Cigar Store, that was expense money.

Q. Do you mean that you drew down those amounts per month? A. Yes, sir.

Q. Would you say that your duties and your work in connection [1374] with those other enterprises, the 110 Eddy, Day-Night, 186 Club and Transit Smoke Shop, were about the same as the Menlo, or did you do more work in the Menlo?

A. Well, the Menlo Club took up the matter of 8 hours a day and the others took up an average of about two or three hours a day.

Q. In connection with your duties in behalf of the Menlo Club, did you have anything to do with

(Testimony of Harold H. Maundrell.)

suggesting or directing what should be done in connection with the creation of good will towards customers and business manager and employees?

A. Not with the club itself. My work was principally with the restaurant part of it in that respect.

Q. Did you have anything to do with giving out of Christmas presents at the end of the year?

A. Well, I did in this respect, that I helped box them and wrap them up as Christmas presents.

Q. Did you participate at any time in wrapping up any Sulka ties to give away as Christmas presents?

A. Oh, yes.

Q. Were you ever given any Sulka ties as presents?

A. Oh, yes.

Q. How many times, would you say?

A. Not less than two dozen, 25 Sulka ties.

Q. Did you ever receive as Christmas presents any merchandise orders from Bullock & [1375] Jones?

A. Yes, sir.

Q. Did you ever receive as a present of any kind any suit that was made by Greenhouse and Cordova? Of New York?

A. Yes, sir, I have it on.

Q. When did you receive that?

A. 1944.

Q. And that is when you were connected with Cal-Neva Lodge, associated with Mr. Remmer in Cal-Neva Lodge?

A. Yes, sir.

Q. That was, of course, before the inception of the Menlo Club under the partnership that we are talking about, is that correct?

A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. You stated you were interviewed by agents of the Internal Revenue, Mr. Ezralow, Mr. Morgan, Mr. Harkness and Mr. Weaver?

A. Only once by Mr. Weaver.

Q. And were you requested at any time by any or all of those agents to turn over any of the books of the various enterprises that you had charge of?

A. Yes, sir.

Q. Can you tell us by whom and when?

A. I believe the request came from Mr. Morgan and Mr. Harkness.

Q. What were you requested to turn over?

A. Well, they asked me—of course, I knew there was an investigation at the time—and they asked me if they could take [1376] certain books. They had books that related back to 1943, '44 and '45 that I had in my possession at that time and were given to me by Mr. Slater, and I turned over everything that I had that they asked for.

Q. When you say everything you had, do you mean in the way of cash books, ledgers, and so on?

A. Ledgers, and everything they asked for, yes.

Q. Now were the books of the year 1946 included in that request?

A. If they were not included, I believe they were the second time.

Q. Isn't it a fact that ultimately you were asked to turn over all the books that you kept for the various enterprises in which Mr. Remmer was interested, from the year 1943 up to the year 1948?

A. I believe—I am not quite positive of the date

(Testimony of Harold H. Maundrell.)

—I believe the latter part of '46 or beginning of '47 that I turned over all the books up to 1947.

Q. Now was there a subsequent—you said something about subsequent request—was there a subsequent request for additional books?

A. Well, later on—I might state that during this interview I gave them the books with the understanding that I could have back the books whenever I wanted them and occasion arose where I asked them to bring me back certain books, which Mr. Morgan [1377] did. I don't remember just now what the books were. I don't remember what they all were, just certain books I had to have and then at a later date the books were all taken away again, I don't remember the date.

Q. At a later date they were taken out of the possession of Mr. Kyne, isn't that correct?

A. I believe they were. I believe he turned them over at that time.

Q. Now when you say you gave them the books with the understanding that they were to be returned to you when, if, and as you needed them, I take it from that that they actually took them physically away, is that correct?

A. Yes.

Q. And when you had to refer to some of the books, they had to bring them back to you, is that correct?

A. That is right.

Q. That meant in other words, when they left the office, they took them away?

A. Yes, the first time they took them away in two large boxes. I mentioned to Mr. Morgan at the

(Testimony of Harold H. Maundrell.)

time, how are you going to carry those two big boxes?

Q. Did you get a receipt for these books?

A. I don't remember whether I received a receipt the first time.

Q. Did you at any time receive a receipt? [1378]

A. I don't remember.

Q. Did any of the agents at any time question you concerning any of the items that appeared in your books, either by way of inquiry or anything of that sort?

Mr. Campbell: Objected to as incompetent.

The Court: Objection sustained.

Mr. Gillen: May I put one more question—I am not in disobedience to your Honor's ruling?

The Court: Yes, sir.

Q. Did any agent at any time require from you any explanation of anything that appeared in any of your books?

Mr. Campbell: Objected to as incompetent.

The Court: Same ruling.

Mr. Campbell: May I suggest a recess at this time?

(Jury and alternate jurors admonished and recess taken at 4:00 o'clock.) [1379]

December 28, 1951—10:00 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, in your direct testimony yesterday you stated that the name of William Remmer was on one of the social security forms or the employer's forms of the Menlo units, do you recall that? A. Yes, sir.

Q. And you identified that William Remmer as the nephew of Elmer Remmer, the defendant?

A. Yes, sir.

Q. And you also stated that returns had been made for the Menlo Club originally in the name of William Remmer doing business as the Menlo Club, do you recall that testimony? A. Yes, sir.

Q. Now I will show you the prosecution's Exhibits 89, 90 and 91 and defendant's Exhibit "Y." I will further identify these for you as the 1945 return and amended return, 1946 return and amended return of the Menlo Club. I will ask you to look at these and see if it isn't a fact that the returns were made, not in the name of William Remmer, doing business as the Menlo Club, but in the name of the Menlo Club? A. Yes, sir. [1380]

(Testimony of Harold H. Maundrell.)

Q. Now you were mistaken about that, were you not, Mr. Maundrell?

A. I was as to the—that is the income tax return of the partnership.

Q. Now, Mr. Maundrell, I am going to hand you the prosecution's Exhibit 125, which you will recall as the Menlo Club ledger, and with regard to the payments that were made to Gene Schriber on account of the purchase of the Menlo Club units, namely, the social club, the bar and the restaurant, will you tell us just how those payments were made?

A. Well, the first payment was made before I entered into the picture.

Q. That was the payment of 25 thousand dollars cash on April 30 of 1945, is that correct?

A. That's right.

Q. And at that time you were employed and had engaged yourself at the Cal-Neva in the capacity you have heretofore described, is that correct?

A. Well, not at that moment. I was in southern California when it all took place.

Q. Well, you went to Cal-Neva in May in the season, did you not?

A. No, not until the latter part of June.

Q. Then when you went up to Cal-Neva, an arrangement was made for you to also employ yourself at the Menlo Club. During the balance of that summer season, I understood you to say that [1381] you spent part of your time in Cal-Neva and only a part of your time in San Francisco at the Menlo Club, is that correct?

A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. Then in the month of August of 1945, you were setting up books for the Menlo Club, were you not? A. That's right.

Q. And when you commenced to set up the books for the Menlo Club, from there on what were the payments that were made to Gene Schriber on account of the purchase price of the Menlo Club and the two other units, the bar and the restaurant?

A. Well, in the first place we decided, what I wanted——

Mr. Campbell: I am going to object on the ground the answer will not be responsible.

The Court: Just listen to the question, Mr. Maundrell, and confine your answer to the matters responsive to the question.

A. May I have the question?

(Question read.)

Mr. Gillen: Let me withdraw the question and ask you this.

Q. Did you initially, when you set up the books for the Menlo Club, do anything with relation to the initial payment of 25 thousand dollars cash?

A. Well, when I originally set up the books the 25 thousand dollars cash was set up in the [1382] books.

Q. Yes, and that was reflected on the page out of the ledger which is now prosecution's Exhibit 140, isn't that correct? A. Yes, sir.

Q. And that showed there had already been made, as of date of April 30th, the payment of 25 thousand dollars cash? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. Now did you thereafter, in the month of August, do anything with relation to that 25 thousand dollars cash that had already been paid?

A. Yes, sir.

Q. And what did you do?

A. I called in Mr. Schriber and Mr. Remmer and told them that we had better make out a check for 25 thousand dollars and to just exchange it for the 25 thousand dollars in cash.

Q. In other words, you asked Mr. Schriber to give you back 25 thousand dollars in cash, which you would deposit in the bank, and issue him a check for that payment, is that correct?

A. Yes, sir.

Q. And did Mr. Schriber return the 25 thousand dollars cash?

A. He returned that to Mr. Remmer.

Q. And was that turned over to you to put in the proper account?

A. Yes, sir.

Q. And did you put it in the proper account?

A. Yes, sir.

Q. And did you thereupon issue check for 25 thousand dollars? [1383]

A. Yes, sir.

Q. And that check was paid out of the proper account, is that correct?

A. Yes, sir.

Q. Thereafter what was the next payment that was made?

A. Next payment was made September 8th.

Q. And that was in the sum of 25 thousand dollars, was it not?

A. Made in three separate payments.

(Testimony of Harold H. Maundrell.)

Q. Three separate checks, all dated the same day, is that correct? A. Yes, sir.

Q. One check for 15 thousand dollars, one for \$8500 and one for \$1500, making a total of 25 thousand dollars, is that correct? A. Yes, sir.

Q. Do you recall why it happened to be three checks instead of one check?

A. Mr. Schriber made a request that I make out the checks that way.

Q. In other words, he wanted three separate checks? A. Yes, sir.

Q. In the amounts specified, is that correct?

A. Yes, sir.

Q. Now Mr. Campbell asked you regarding a 50 thousand dollar check that had been made out on August 8th and invalidated by tearing off the signature, or something of that sort. Do [1384] you recall the circumstances under which that check was made out and then invalidated?

A. Well, originally I made out the check for 50 thousand dollars. Twenty-five thousand of that was to take care of the original 25 thousand cash that had been paid in the original——

Q. Half of that check was to be covered by the money, the 25 thousand dollars Mr. Schriber was to return to you?

A. That's right. And then the other 25 thousand was for an additional payment.

Q. That was September payment or the second payment?

(Testimony of Harold H. Maundrell.)

A. It was for the second payment.

Q. And do you recall why or under what circumstances you caused the check to be invalidated?

A. Well, when Mr. Schriber came to the office, I told him at the time that we didn't have 50 thousand dollars in the bank and asked him to hold it and he decided at that time he didn't want the check. He said, "You had better make me out a check for 25 thousand dollars," so the check was cancelled at that time and I made a further check out for 25 thousand dollars.

Q. So you made out a check for the cash he gave you for the 25 thousand dollars?

A. And then I made out an additional 25 thousand dollar check for the second payment and at that time I asked him to hold the check.

Q. I see. [1385]

A. And then after that he decided, "Well, I will just take the one check now." The check was cancelled out for the 25 thousand dollars cash and just forget about that check and cancelled that for the time being?

Q. So the 50 thousand dollar check was cancelled and one of the 25 thousand dollar checks was cancelled?

A. Yes, sir.

Q. Now on the following month, when you paid him the 25 thousand dollars in three separate checks at his request, did he tell you why he wanted the checks in those particular amounts?

Mr. Campbell: Objected to as immaterial.

The Court: Objection overruled.

(Testimony of Harold H. Maundrell.)

A. He wanted the checks made in different amounts because he had some obligations, he told me, that he wanted to pay.

Q. In other words, he wanted to use the checks directly to cover obligations of his own?

A. Yes.

Q. Now when was the next payment, or the third payment, made to Mr. Schriber on the purchase price of the Menlo units?

A. February 28, 1946, 25 thousand dollars.

Q. And that was made by check? A. Yes.

Q. And when was the next payment made?

A. May 1, 1946, 25 thousand dollars.

Q. And when was the next payment after that made? [1386]

A. May 1, 1947, 25 thousand dollars.

Q. Now do you recall, Mr. Maundrell, that there was one payment that was held up for a time because Mr. Schriber was unable to furnish the Menlo bar with a liquor license?

A. Yes, sir, that's correct.

Q. And that delayed the payment. The payment was retained, wasn't turned over until that liquor license was cleared, is that correct?

A. That's the reason the payment was not made until February.

Q. Of 1946?

A. '47. No, I beg your pardon, '46.

Q. That was the third payment that was held out? A. Yes, sir.

Q. Now the amounts due on these payments had

(Testimony of Harold H. Maundrell.)

been evidenced by promissory notes, is that correct?

Mr. Campbell: Objected to—the notes are the best evidence.

The Court: Objection overruled.

A. I believe there were notes in existence at the time.

Q. Now after you had——

Mr. Campbell: Pardon me—I ask that the answer be stricken, based upon his belief.

The Court: Oh, it may stand.

Q. Mr. Maundrell, after you had arranged for Mr. Schriber to return the 25 thousand dollars in cash, so that you could issue [1387] a check for that 25 thousand dollars to have a check record or a bank record of that first payment or down payment, you did then, did you not, set up a new page in the ledger showing the transaction? A. Yes.

Q. And in other words, the page that is now marked prosecution's Exhibit 140, which is the photostat before you there, was corrected by the page which is in prosecution's Exhibit 125 and which has been marked 125C? A. 125C.

Q. So there were two corrections on that original page, 140, is that correct, one correction being the allocation of the value of the furniture, fixtures and merchandise and the lease, which was originally set up as 100 thousand dollars for the lease and 75 thousand dollars for the furniture, fixtures and merchandise, that was corrected after the State appraisal, isn't that correct? A. Yes, sir.

Q. And then the matter of payments to Schriber

(Testimony of Harold H. Maundrell.)

was also corrected on 125C? A. Yes, sir.

Mr. Gillen: I will ask the clerk to mark these two pages for identification.

The Clerk: Defendant's "Z."

Q. Mr. Maundrell, the exhibit 140, which is a photostatic copy [1388] the page originally made in the ledger for the Menlo Club, incorrectly reflects the transcripts thereon, while Exhibit 125, the rewritten page, correctly reflects the transactions, is that true? A. Yes, sir.

The Court: When you mention 125 do you mean 125C?

Mr. Gillen: Yes, I do, your Honor, 125C is the page that we are interested in.

Mr. Campbell: Counsel you stated I had a copy of this. I have never seen that document.

Mr. Gillen: It was supplied by your office or the Internal Revenue.

Mr. Campbell: I have never seen the document.

Mr. Gillen: If counsel will check his files, I am sure you will find it.

Q. Mr. Maundrell, I will show you defendant's Exhibit "Z" for identification. I will ask you to look at it and tell us whether or not that fully reflects the status of payments by the Remmer interest to Schriber on account of the purchase of the Menlo units?

Mr. Campbell: If the Court please, the document itself purports to be document, shows in 1949, not signed by this witness, but signed by other individuals, and purports to be a recitation of some kind

(Testimony of Harold H. Maundrell.)

and I submit that the document of this kind is not the best evidence for any purpose. [1389]

Mr. Gillen: May it please the Court, by this very witness in direct examination Mr. Campbell used the identical procedure in establishing the matter of the purchase of a safe. He presented a bill from Herman Bros., reciting a safe had been purchased by Mr. Kyne. He asked Mr. Maundrell to look at it and if that described the safe which was at 52 Mason Street and he asked Mr. Maundrell if he recognized the signature of William Kyne and on that foundation laid, he put that exhibit before the jury and read the exhibit. The identical procedure.

The Court: Let me see this exhibit please. Objection will be sustained.

Mr. Gillen: Well, I would like to read your Honor the transcript on that ruling your Honor made and your Honor will see it is the identical procedure that was used and as a matter of fact, Mr. Maundrell in that instance was called upon—

The Court (Interceding): This ruling will stand.

Mr. Gillen: May I finish my statement to your Honor?

The Court: There is nothing before the Court.

Q. Mr. Maundrell, you look at defendant's Exhibit "Z" for identification, on the signature page, the last page, and tell us whether or not you can identify the two signatures on that page?

Mr. Campbell: Objected to as incompetent and immaterial.

(Testimony of Harold H. Maundrell.)

The Court: Objection overruled. You may answer that question.

A. Yes, I recognize both signatures. [1390]

Q. And whose signatures are they?

A. The first signature is Gene Schriber. The second signature is Elmer Remmer.

Q. Now I will ask you to read that document and tell us whether or not that truly reflects the status of the payments on the purchase of the Menlo Club as you, of your own knowledge, know them to be?

Mr. Campbell: Objected to as incompetent and immaterial and an attempt to summarize the testimony through the use of a document to which the witness was not a party.

The Court: Objection is sustained. After reading and examining the Exhibit "Z," I would not permit it to be introduced in evidence, so I don't see any sense in going along identifying it further.

Mr. Gillen: May it please the Court, he was first permitted to answer whether or not 125C truly reflected the transaction as he knew it. Now he is being asked to identify another document evidencing the status of the transaction as he knew it.

The Court: The ruling will stand.

Mr. Gillen: All right. Then on the foundation of his having recognized the signatures of both parties, may it please the Court, I will ask that defendant's Exhibit "Z" for identification be admitted in evidence.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: We object on all the grounds heretofore [1391] stated.

The Court: Objection will be sustained.

Mr. Gillen: Then, may it please the Court, I would like to be heard on the matter under whatever conditions your Honor imposes.

The Court: We will excuse the jury.

(Jury and alternate jurors admonished and excused at 10:30.)

(Argument in the absence of the jury.)

(NB 329 P. 26-33.)

The Court: The ruling will stand.

11:10 A.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumes the witness stand on further

Cross-Examination

By Mr. Gillen:

Q. Mr. Maundrell, after you had assembled your data for the returns for the Menlo Club, you turned them over to Mr. Ayton to prepare the returns, is that correct? A. Yes, sir.

Q. And then they were turned back to you by Mr. Ayton for the signature of Mr. Remmer, is that true? A. Yes, sir.

(Testimony of Harold H. Maundrell.)

Q. I will show you the prosecution's Exhibits 89 and 91 and defendant's Exhibit "Y" and I will identify them as 89, 1945 return of the Menlo Club, 91, the amended 1946 return of the Menlo Club, defendant's Exhibit "Y" the amended 1945 [1392] return for the Menlo Club, and I will ask you to tell us whether or not Mr. Remmer's signature appears on those three returns? A. Yes, sir.

Q. Did you present those to Mr. Remmer for his signature? A. Yes, sir.

Q. Did Mr. Remmer read those returns at the time he signed them?

Mr. Campbell: Objected to as calling for the witness' conclusion.

The Court: Objection overruled; if he knows.

A. No.

Q. He did not read them? A. No, sir.

Q. Now. Mr. Maundrell, I am going to hand you the prosecution's Exhibit 125, which contains several pages. This is the ledger of the Menlo Club, which contains a number of pages, some of which have been identified by letters accompanying the No. 125, and I will ask you to turn to the capital accounts of partner's page and will you look at the account of Oscar Nelson. Do you have that before you now? A. Yes, sir.

Q. Now on the 1945 Menlo Club return, the account of Oscar Nelson, under Schedule I of that return, shows that Oscar Nelson had a 10 per cent interest in the profits and that the profits credited to his account for the year 1945 was \$11,548.88.

(Testimony of Harold H. Maundrell.)

Mr. Campbell: From what exhibit are you reading? [1393]

Mr. Gillen: This is prosecution's Exhibit 89.

Q. Will you look at that account for Oscar Nelson and tell us what your ledger sheet reflects as to credit of profits to Mr. Nelson for the year 1945?

A. Mr. Nelson in 1945 had a balance of \$11,548.88.

Q. What is that page designated, 125C?

A. This page I am looking at now is 125A.

Q. Will you look at 89 and see if that is the same figure, \$11,548.88? A. Yes, sir.

Q. Now, Mr. Maundrell, you have seen that figure is identical as reflected in your book, the credit of profits to Mr. Nelson for the year 1945, \$11,548.88 and as appears in the schedule, Schedule I for the 1945 return of the Menlo Club. Does that figure reflect Mr. Nelson's interest or equity in the business as of that time, built up by the profits?

Mr. Campbell: Objected to as calling for his conclusion in a legal matter which is in the province of the court, under the contract.

The Court: Objection will be overruled. You may answer the question.

A. Yes, it does.

Q. In other words, that represents the equity that Mr. Nelson had acquired at that time by leaving his profits in the business, is that correct? [1394]

A. Yes, sir.

Q. And that is what he paid income tax on as partner in that business, as being a partner with

(Testimony of Harold H. Maundrell.)

one-tenth interest in that business, \$11,548.88, isn't that correct?

Mr. Campbell: Objected to as calling for his conclusion as to what Mr. Nelson paid income tax on; not the best evidence.

The Court: Isn't that merely reading from the exhibit itself?

Mr. Gillen: That's right.

Mr. Campbell: Well, Mr. Nelson's returns were not here. He is asking if that is the amount Mr. Nelson reported on his individual income tax.

Mr. Gillen: No. If counsel understands it that way, let me put it this way.

Q. That is what Mr. Nelson was charged with in the partnership return, that much profit?

Mr. Campbell: I don't object to that question.

Mr. Gillen: That is nice. Then we can get along.

Q. I will show you, Mr. Maundrell, prosecution's Exhibit 89, 1945 return.

A. May I have the question?

(Question read.)

Q. Do you understand now?

A. Mr. Nelson had in his capital account a balance in 1945 of \$11,548.88, the same as reflected in the partner's shares [1395] in the return of the Menlo Club for 1945.

Q. Maybe my question isn't clear. That is what he is charged with in the income tax to pay tax on?

Mr. Campbell: I object to the question in that form. I think it is evident, if the Court please, that

(Testimony of Harold H. Maundrell.)

the same amount that is in the books is reflected in the partnership return.

Mr. Gillen: But insofar as profits out of the partnership, he would be responsible to pay taxes on that amount?

Mr. Campbell: I object to that question, calling for conclusion of this witness.

Mr. Gillen: He may have some other income he paid income taxes on over and beyond this enterprise.

The Court: Let me have the question.

(Question read.)

The Court: You may answer the question.

A. I do not understand the question.

Mr. Gillen: I will withdraw it.

Q. Now, Mr. Maundrell, you were questioned about two checks that you issued—I took your book away from you too soon, Mr. Maundrell—with the Court's permission I will hand you this ledger again, prosecution's Exhibit 125, and reading from prosecution's Exhibit 90 in evidence, which is the 1946 return of the Menlo Club the following year; I will ask you to turn to the capital accounts of the partners, Mr. Oscar Nelson again, [1396] and reading from this return under Schedule I, it appears in this Exhibit 90 that Mr. Nelson's interest had increased to 15 per cent and that it is reflected here that he reported on the profits for the year 1946 as a partner with a 15 per cent interest in the Menlo Club in the sum of \$12,524.49. Will you read what

(Testimony of Harold H. Maundrell.)

the ledger sheet reflects was his profits as reflected on your capital account for Mr. Nelson for the year 1946? A. 1946 profit, \$12,524.49.

Q. And will you look at prosecution's Exhibit 90 and tell us is that the identical amount that appears in the income tax return for the year 1946?

A. Yes, sir.

Q. Now that entry in your ledger means that Mr. Nelson, as a result of leaving his profits in the business, had acquired, as of that time, that is of the balance of the year 1946, the end of the year 1946, an equity or interest in the business to the extent of \$12,524.49?

Mr. Campbell: Objected to as calling for his conclusion. He is calling for a legal conclusion which is in the province of the Court.

The Court: Doesn't it amount to this—couldn't the question be put this way: "Did a credit of that amount remain on the books at the end of that year?"

Mr. Gillen: Yes, acquired from the profits that he had participated in? [1397]

The Court: I think it amounts to the same thing, so the objection will be overruled. He may answer the question.

Mr. Campbell: That is the latter question, the question suggested by the Court?

The Court: Of course, I can not suggest questions to counsel.

Mr. Gillen: I think the Court's suggestion is right.

(Testimony of Harold H. Maundrell.)

The Court: Very well; you may answer the question.

A. In 1946 he had credited to his account \$12,-524.49. At that time he had a balance of \$11,548.88, which gave him a total balance of \$24,073.37.

Q. So that accumulated profits that he left in the business, they gave him that interest in the business, is that correct?

Mr. Campbell: I object to the question in that form.

Mr. Gillen: This is cross-examination.

The Court: I think it amounts to the same thing. Objection overruled.

A. Yes, sir.

Q. These partners did, from time to time, draw on their accounts to pay income taxes on the amount of their profits, isn't that so? A. Yes, sir.

Q. What is the next entry that appears after the 1946 that you have read there? What is the next entry that appears on [1398] the Oscar Nelson account?

A. Pay Collector of Internal Revenue \$3,282.16, leaving a balance of \$20,791.21.

Q. In other words, that means that out of the credit on the books Mr. Nelson drew enough money to pay his income tax on those profits, is that correct? A. Yes, sir.

Q. Now, Mr. Maundrell, will you read us the next entry of the Oscar Nelson account?

A. Franchise Tax Commission—that is for the

(Testimony of Harold H. Maundrell.)

State of California—\$96.13, leaving a balance of \$20,695.08.

Q. That last amount was payment of the individual income tax to the State of California?

A. Yes, sir.

Q. What was the next item after that?

A. In 1947—

Q. Pardon me just a moment. That means, does it not, that Mr. Nelson also withdrew 96 odd dollars to pay his income tax to the State of California on those profits? A. Yes, sir.

Q. All right, what is the next item?

A. 1947 he collected \$750, paid to the Collector of Internal Revenue, leaving a balance of \$19,945.08.

Q. And that means he withdrew from his credit on the books 700 odd dollars to pay the Internal Revenue Collector, is that [1399] correct?

A. Yes.

Q. What is the next item on Mr. Nelson's sheet?

A. Paid to Collector of Internal Revenue for 1947, \$1,878.24, leaving a balance of \$18,066.84.

Q. All right, what is the next item?

A. He withdrew to pay the Franchise Tax Commission, State of California, \$67.90, leaving a balance of \$17,998.94.

Q. All right, what is the next item?

A. In march of '47 he drew on the account \$2000, leaving a balance of \$15,998.94.

Q. All right, and what is the next item?

A. August 8th—

Q. This is 1947?

(Testimony of Harold H. Maundrell.)

A. Yes, sir. He drew to pay Collector of Internal Revenue \$18.78, leaving a balance of \$15,980.20.

Q. What is the next item?

A. September 1st he paid the Collector of Internal Revenue on estimated tax \$1500, leaving a balance of \$14,480.16

Q. What is the next?

A. September 23rd on the amended tax return he paid \$40.89, leaving a balance of \$14,439.27.

Q. And now will you give us the next item?

A. September he drew on the account \$2,000, leaving a balance of \$12,439.27. [1400]

Q. And what is the next item?

A. In November he drew \$2,000, leaving a balance of \$10,439.27.

Q. This is still 1947, is it? A. Yes, sir.

Q. What is the next item?

A. December he drew on the account \$2,000, leaving a balance of \$8,439.27.

Q. And what is the next item after that?

A. 1948 paid Collector of Internal Revenue \$750, leaving a balance of \$7,689.27.

Q. What is the next item?

A. That is the last item in the book.

Q. There was a credit left on the books there, was there not? A. Yes, sir.

Q. About \$7600. A. \$7,689.27.

Q. So that the equity, something in excess of 20 thousand dollars he built up out of the profits, he

(Testimony of Harold H. Maundrell.)

withdrew for his own use and benefit, all but \$7600, is that correct? A. Yes, sir.

Q. Now, Mr. Maundrell, you were questioned concerning two checks that were issued by you in November of 1945—November 16th, I believe was the date—for six thousand dollars to Lou Brice and Mattie Silverman. Those two checks, totalling 12 thousand dollars, represented a 12 thousand dollar investment [1401] that Mr. Remmer made in a night club in New York with Mr. Brice and Mr. Silverman, is that correct? A. Yes, sir

Q. And that night club failed, did it not?

A. Yes, sir.

Q. In how short a time? A. About 8 days.

Q. It operated about 8 days and failed?

A. Yes, sir.

Q. Did Mr. Remmer ever get back any of the proceeds of those two checks for 12 thousand dollars?

Mr. Campbell: Objected to as calling for his conclusion.

The Court: Objection sustained.

Q. Up until the time you left the association with Mr. Remmer in 1948, to your knowledge did any of that money ever come back? Did he recover any of that 12 thousand dollar investment?

Mr. Campbell: Also calling for conclusion

The Court: Same ruling.

Mr. Gillen: I am asking if he had knowledge. He is the man that handled that.

The Court: Answer that question yes or no.

(Testimony of **Harold H. Maundrell.**)

Q. Do you have the question in mind?

A. Yes, sir.

Q. Some of the money did come back?

A. Yes, sir. [1402]

Q. Part of the 12 thousand dollars?

A. Yes, sir.

Q. How much did he get back out of the 12 thousand dollars?

A. I believe around eight thousand dollars.

Q. And in what form did that come?

A. That I do not know.

Q. Did it pass through your books?

A. No, sir.

Q. It didn't pass through your books?

A. No, sir.

Q. So that there was lost on that investment how much?

Mr. Campbell: Just a minute—objected to as calling for his conclusion. He knew some money came back but otherwise it would be conclusion as to whether the balance was paid.

The Court: It is just a matter of deducting 8 thousand from 12 thousand.

Mr. Campbell: Yes, but he wouldn't know whether or not the balance of the four thousand was returned.

The Court: Objection will be sustained.

Q. Do you know when that 8 thousand dollars came back and in what form?

A. No, I do not.

Q. It didn't pass through your hands?

(Testimony of Harold H. Maundrell.)

A. No, sir.

Q. I ask you for your knowledge on the subject. Did it come [1403] back after 1948?

A. It was way before 1948.

Q. Well, do you know when it came back? Do you have any knowledge on the subject?

A. No, I don't remember at this time.

Q. You don't remember when it came back?

A. No, sir.

Q. What is your information on the subject, based on what somebody told you or what you saw yourself?

Mr. Campbell: That is objected to——

The Court: Objection sustained.

Mr. Gillen: I asked for his knowledge, your Honor. The objection was made by counsel to my initial question that I was calling for his opinion, calling for hearsay.

The Court: You may answer the question.

A. May I have the question?

(Question read.)

A. I had a conversation with both Mr. Remmer and Mr. Brice.

Q. And when was that conversation?

A. Well, the conversation with Mr. Remmer was about four or five months, I believe, after the ill-fated night club folded up in New York, at which time he told me he received back about 8 thousand dollars.

Q. And when was your conversation with Mr. Brice?

(Testimony of Harold H. Maundrell.)

A. I had a conversation with Mr. Brice about two months ago in [1404] Honolulu.

Q. So that your information on the subject is based on what was told to you by these two men?

A. That's right.

Q. You have no personal knowledge of how much was returned, from your own knowledge?

A. No, sir.

Mr. Gillen: Well then, may it please the Court, I move the testimony be stricken as not responsive. The question was based upon his personal knowledge on the subject. When the initial question was asked, when I used the word "knowledge," counsel offered the objection I was calling for hearsay evidence and your Honor ruled that if the word, "his own personal knowledge" was included in the question, he could answer on the basis of his own personal knowledge.

The Court: Motion denied, the answer will stand.

Mr. Gillen: Not that it is based on hearsay?

The Court: Motion denied.

Q. Your knowledge then, outside of the issuance of checks for 12 thousand dollars, was based on hearsay?

Mr. Campbell: Just a moment——

The Court: Objection sustained.

Q. Now, Mr. Maundrell, in the course of your duties in keeping the books of account of the Menlo Club and various other enterprises that you have stated that you kept books for, including [1405]

(Testimony of Harold H. Maundrell.)

some attention to Mr. Remmer's personal account, did you ever prepare a promissory note for Mr Remmer's signature? A. Yes.

Mr. Campbell: Just a minute.

The Court: The answer may go out.

Mr. Campbell: Objected to on the ground it is not within the scope of direct examination.

(Question read.)

The Court: What is your objection?

Mr. Campbell: Not within the scope of direct examination.

The Court: Objection overruled. You may answer the question.

A. Yes.

Q. And that promissory note was for the sum of 50 thousand dollars that Mr. Remmer borrowed, was it not?

Mr. Campbell: Objected to as not the best evidence, if the Court please. He says "that promissory note." He asked him first, "Did you ever prepare a note?" and then he says "that promissory note was for 50 thousand dollars." I submit the promissory note is the best evidence.

Mr. Gillen: I will withdraw the question.

Q. It is true, is it not, that you prepared a promissory note for Mr. Remmer's signature for the sum of 50 thousand dollars borrowed from a certain person? [1406]

Mr. Campbell: I make the same objection.

The Court: Objection sustained.

(Testimony of Harold H. Maundrell.)

Mr. Gillen: That isn't the best evidence?

The Court: I don't know how this witness can testify why Mr. Remmer wanted the note.

Mr. Gillen: I will ask this be marked for identification.

The Clerk: Defendant's A-1.

Q. Mr. Maundrell, I will show you defendant's Exhibit A-1 for identification. I will ask you to look at this and tell us if you recognize this instrument?

A. Yes, sir.

Q. Whose letterhead was that?

A. My personal letterhead.

Q. And that is the letterhead you used during the time that you were managing the affairs that you have described here for the Menlo Club and other enterprises?

A. Yes, sir.

Q. And at whose instance and request, if anybody's, did you make out that document?

A. At Mr. Remmer's.

Q. Who else was present when that was made out?

A. Mr. Jeffres.

Q. Where is Mr. Jeffres now, if you know?

A. I understand he passed away.

Mr. Gillen: I offer this, may it please the Court, as [1407] defendant's exhibit next in order.

Mr. Campbell: Objected to as no proper foundation laid as to the time of preparation. Further, it was not prepared within the scope of events set forth in the indictment; secondly, in addition to the lack of proper foundation, that it is not within the scope of direct examination of this witness, as will

(Testimony of Harold H. Maundrell.)

appear upon examination of the document itself.

Mr. Gillen: I will ask a couple of more questions, your Honor.

Q. Look at this document again and tell us whether or not it was made out on the date it bears?

A. Yes, it was made out September 27, 1946.

Q. And by whom was it prepared?

A. I prepared it.

Q. Did you type it yourself? A. Yes, sir.

Q. And as to the purported signature on there, whose signature is that, do you know?

A. Mr. Remmer's.

Q. Did you see him sign that?

A. Yes, sir.

Q. In whose presence?

A. In the presence of Mr. Jeffres and myself.

Q. Where was that signed?

A. At Mr. Remmer's office, 50 Mason [1408] Street.

Mr. Gillen: I offer it in evidence.

Mr. Campbell: Objected to on the grounds of immateriality and not within the scope of direct examination.

The Court: Objection overruled. It may be admitted in evidence. Exhibit A-1.

Q. Now, Mr. Maundrell, will you relate from the begining to end under what circumstances you were directed to, and did, prepare that exhibit?

Mr. Campbell: Objected to as incompetent, call for a narrative statement.

(Testimony of Harold H. Maundrell.)

The Court: I will sustain the objection.

Mr. Gillen: Well, I would like to be heard on that, your Honor.

The Court: Very well, I will excuse the jury. I think the question is rather indefinite and it can't be anticipated what will be expected in the way of an answer or what will come.

Mr. Campbell: I can not interpose proper objections to a question of this kind.

Mr. Gillen: All right.

Q. Mr. Maundrell, on the day that this document was made out, where were you?

A. I was in the office, 50 Mason Street.

Q. Was Mr. Remmer there?

A. Yes, sir. [1409]

Q. Was Mr. Remmer in the same room that you were in? A. Part of the time.

Q. Now were you present when Mr. Jeffres first appeared there? A. Yes, sir.

Q. And did Mr. Jeffres bring anything with him? A. Yes, sir.

Q. What did he bring?

A. He brought a package with some money in it.

Q. What was the appearance of the package?

A. Wrapped up in a newspaper.

Q. What, if anything, did he do or say about the package with the money in it when he arrived?

A. He told me he had a package for Mr. Remmer.

Q. What did you do?

(Testimony of Harold H. Maundrell.)

A. I told him Mr. Remmer was in his own office, so he went back to Mr. Remmer's office.

Q. What happened next?

A. About—I don't remember the time, 10 or 15 minutes later, Mr. Remmer came out of his office and asked me to come into his office, which I did.

Q. Who was present in the office when you went in? A. Mr. Remmer and Mr. Jeffres.

Q. What was said then?

A. Mr. Remmer asked me to make out a note to Mr. Jeffres for 50 thousand dollars. [1410]

Q. What, if anything was said then by any one?

A. Well, I think at the time I asked him whether he wanted an installment note or just a straight note. Mr. Jeffres said, "Just a little simple note so I have something to show for this."

Q. Mr. Jeffres said, just a little simple note so he would have something to show for it?

A. Yes.

Q. And as a result of that, did you make out that note? A. Yes, sir.

Q. You took your own stationery and went out to your typewriter and typed up that note, is that correct? A. Yes, sir.

Q. You brought it back in and saw Mr. Remmer sign it? A. Yes, sir.

Q. Did you see what Mr. Remmer did with the note? Did he give it to Mr. Jeffres?

A. He gave the note to Mr. Jeffres.

Q. In your presence? A. Yes, sir.

Mr. Gillen: At this time, may it please the

(Testimony of Harold H. Maundrell.)

Court, I desire to read this exhibit to the jury. This is a letter size sheet, on the top of which appears in printing, "Property Management, 50 Mason Street, San Francisco, California." (Reads Exhibit A-1.) And then a signature line and on the signature line in pen and ink the signature Elmer F. Remmer. [1411]

(Jury and alternate jurors admonished and noon recess taken at 11:45.)

December 28, 1951, 1:00 P.M.

(Defendant present with counsel.)

(Presence of the jury and alternate jurors stipulated.)

MR. MAUNDRELL

resumed the witness stand on further

Cross-Examination.

By Mr. Gillen:

Mr. Gillen: During the noon recess, in order to shorten the balance of the cross-examination, which will be very brief, we asked Mr. Maundrell if he would personally total up the figures that Mr. Campbell had him read of the monthly gross totals of the Menlo Club. We have just discovered that we gave Mr. Maundrell one wrong figure which throws him out \$400. We would like to correct that.

Q. Mr. Maundrell, at the noon recess, and in the

(Testimony of Harold H. Maundrell.)

interest of time, you were requested, were you not, by defense counsel if you would take the figures that Mr. Campbell had you read in direct examination from your records of the monthly totals of the Menlo Club reported income, do you recall that?

A. Yes, sir.

Q. And there was one figure given to you for the month of May, 1946, I believe total figures of January 2nd to and including December, 1946—what figure were you given?

A. \$26,545.35. [1412]

Q. I think the correct figure is \$26,945.35. Will you, Mr. Maundrell, add \$400 to the \$26,545.35 and tell us what your total is?

A. \$412,543.80.

Q. Now, Mr. Maundrell, having made that correction, I will ask you, you recall, do you not, that Mr. Campbell, in his direct examination, asked you to examine Exhibit 126, prosecution's Exhibit 126, which purported to show the monthly totals of the Menlo Club, total receipts and returns, do you recall that?

A. Yes, sir.

Q. Do you recall that Mr. Campbell had you read from your records the totals for January through and including the month of December of 1946, do you recall that?

A. Yes, sir.

Q. Now those totals that you read to Mr. Campbell, did they represent the gross totals or the net totals after the payment of salaries and expenses, and so on?

A. They were the gross totals.

Q. Without the deduction of salaries or other expenses, is that correct?

A. Yes, sir.

Q. Now I am going to place in your hands, in

(Testimony of Harold H. Maundrell.)

case you wish to refer to it, prosecution's Exhibit 126 in evidence, and I am going to ask you to compare, if you wish, the monthly gross totals against the monthly gross totals that you have—— [1413]

Mr. Campbell: If you state they are the same figures you supplied, I have no objection.

Q. Now, Mr. Maundrell, what was the grand gross total shown for the 12 months of 1946, according to the addition which you made at the noon hour from the monthly figures?

A. \$412,543.80.

Q. Now I am going to show you prosecution's Exhibit 90 in evidence, and that I will identify as the 1946 return of the Menlo Club, and I am going to ask you to look at item 1, where it is described as gross income, and tell us what is the grand gross total of the income of the Menlo Club as reported on that 1946 return? It is the first item at the top of the page.

A. \$412,543.80.

Q. Now will you read your total from the figures that were given to you again? A \$412,543.80.

Q. Looking at that return, will you tell us what that return shows as deductions for salaries and other expenses paid out of that gross of 412 thousand odd dollars?

A. It shows under cost of goods sold, that is scratched out and under No. 2(a) promotion expenses, \$3,263.00; under (b) playing cards \$22,037.53, making a total of those two lines, \$25,300.53, leaving a gross profit of \$387,243.27. Now the next line is income from Tiny's Waffle Shop for the year

(Testimony of Harold H. Maundrell.)

showed deficit of \$18,661.42. Under No. 8, rents, which was the rental [1414] of the cigar stand, \$1200, \$100 a month for rent of the cigar stand in the entrance to the Menlo Club. That left a balance of \$369,781.85. Next is salaries, \$227,008.52; rent, \$7800; repairs, \$782.47; taxes, \$7,545.68; depreciation, \$200.00; other deductions authorized by law, \$33,248.61.

Q. Those are all the deductions out of that gross amount, is that correct? A. Yes, sir.

Q. Now Mr. Campbell didn't ask you to state what the net income was. Will you state what the return shows to be the net income after those deductions from that 400 thousand odd dollar figure?

Mr. Campbell: I object to the first statement of counsel and ask that be stricken, as to what I did or did not ask.

The Court: That may be stricken.

A. Line 26, on the ordinary net income, \$93,196.57.

Q. Now, Mr. Maundrell, the last figure that you read, \$93,196.57, that represented the total net income for the entire partnership in the Menlo Social Club, Tiny's Waffle Shop and the Menlo Bar, is that correct?

A. According to this return, yes, sir.

Mr. Gillen: I think that concludes the cross-examination.

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